Supreme Court, U.S.
FILED
JAN 19 2006
OFFICE OF THE CLERK

No. 05-260

IN THE

Supreme Court of the United States

JOEL SEREBOFF and MARLENE SEREBOFF,

Petitioners,

v.

MID ATLANTIC MEDICAL SERVICES, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

GREGORY SCOTT COLEMAN
Counsel of Record
for Respondent
WEIL, GOTSHAL & MANGES
8911 Capitol of Texas Highway
Suite 1350
Austin, TX 78759
(512) 349-1930

PETER K. STRIS
Counsel of Record
for Petitioners
WHITTIER LAW SCHOOL
3333 Harbor Blvd.
Costa Mesa, CA 92626
(714) 444-4141, x 460

PETITION FOR CERTIORARI FILED AUGUST 25, 2005
CERTIORARI GRANTED NOVEMBER 28, 2005

JOINT APPENDIX – TABLE OF CONTENTS

Docket, U.S. District Court, District of Maryland 1
Docket, U.S. Courts of Appeals for the Fourth Circuit .. 16
Verified Complaint 33
Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction 41
Memorandum In Support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction 44
Proposed Temporary Restraining Order 57
Stipulation to Preserve Funds, Withdraw Motion for A Preliminary Injunction, and Briefing Schedule 62
Order Granting Preliminary Injunction and Temporary Restraining Order 64
Order Granting Stipulation to Preserve Funds, Withdraw Motion for A Preliminary Injunction, and Briefing Schedule 69
Joint Stipulation of Facts .....
..... Petition for Certiorari, 36a – 45a
Exhibit 1 to Joint Stipulation of Facts 71
Exhibit 2 to Joint Stipulation of Facts 77
Exhibit 3 to Joint Stipulation of Facts 87
Exhibit 4 to Joint Stipulation of Facts 91
Exhibit 5 to Joint Stipulation of Facts 93
Exhibit 6 to Joint Stipulation of Facts 95
Exhibit 7 to Joint Stipulation of Facts 97
Exhibit 8 to Joint Stipulation of Facts 98
Exhibit 9 to Joint Stipulation of Facts 100
Exhibit 10 to Joint Stipulation of Facts 103
Exhibit 11 to Joint Stipulation of Facts 104
Exhibit 12 to Joint Stipulation of Facts 108

Exhibit 13 to Joint Stipulation of Facts..... 110
Exhibit 14 to Joint Stipulation of Facts..... 112
Exhibit 15 to Joint Stipulation of Facts..... 113
Exhibit 16 to Joint Stipulation of Facts..... 116
Exhibit 17 to Joint Stipulation of Facts..... 117
Exhibit 18 to Joint Stipulation of Facts..... 119
Exhibit 19 to Joint Stipulation of Facts..... 120
Exhibit 20 to Joint Stipulation of Facts..... 121
Exhibit 21 to Joint Stipulation of Facts..... 124
Exhibit 22 to Joint Stipulation of Facts..... 125
Exhibit 23 to Joint Stipulation of Facts..... 130
Exhibit 24 to Joint Stipulation of Facts..... 134
Exhibit 25 to Joint Stipulation of Facts..... 135
Exhibit 26 to Joint Stipulation of Facts..... 136
Exhibit 27 to Joint Stipulation of Facts..... 139
Plaintiff's Motion for Contempt 144
Memorandum In Support of Plaintiff's Motion for Contempt..... 146

The following Opinions and Orders and Declaratory Judgment have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

Appendix A – Opinion Of The United States Court Of Appeals For The Fourth Circuit Decided May 4, 2005..... 1a

Appendix B – Memorandum Opinion And Order Of The United States District Court For The District Of Maryland Filed May 10, 2004 ..... 20a

Appendix C – Opinion And Declaratory Judgment And Order Of The United States District Court For The District Of Maryland Decided January 26, 2004... 24a

Appendix D – Order Of The United States Court Of Appeals For The Fourth Circuit Denying Petition For Rehearing And Suggestion For Rehearing *En Banc* Filed June 1, 2005..... 46a

U.S. District Court
District of Maryland (Baltimore)
CIVIL DOCKET FOR CASE #: 1:03-cv-02269-AMD

Mid Atlantic Medical Services, Inc. v. Sereboff et al
Assigned to: Judge Andre M Davis
Cause: 29:1132 E.R.I.S.A.- Employee Benefits

Date Filed: 08/05/2003
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

Mid Atlantic Medical Services, Inc.

represented by **Michelle Ericka Stawinski**
Bouland and Brush LLC
201 N Charles St Ste 2400
Baltimore, MD 21201
14107526000
Fax: 14106253859
Email: michelle@boulandlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Holly Jackson Schimmel
Lawrence and Russell LLP
5050 Poplar Ave Ste 1717
Memphis, TN 38157
19018444439
Fax: 19018444435
TERMINATED: 09/24/2003
ATTORNEY TO BE NOTICED

Thomas Humphrey Lawrence
Lawrence and Russell LLP
5050 Poplar Ave Ste 1717
Memphis, TN 38157
19018444430
Fax: 19018444435
Email:
toml@lawrencerussell.com
ATTORNEY TO BE NOTICED

V.

Defendant

Joel Sereboff represented by **Martin Eugene Wolf**
Quinn Gordon and Wolf Chtd
102 W Pennsylvania Ave Ste 402
Towson, MD 21204
14108252300
Fax: 14108250066
Email:
mwolf@quinnlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Charles Stein
The Boccardo Law Firm LLP
111 W St John St Ste 1100
San Jose, CA 95113
14082985678
Fax: 14082879038

ATTORNEY TO BE NOTICED

Defendant

Marlene Sereboff represented by **Martin Eugene Wolf**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Charles Stein
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

John Stein
TERMINATED: 08/29/2003

Defendant

The Boccardo Law Firm, LLP
TERMINATED: 08/29/2003

Date Filed	#	Docket Text
08/05/2003	1	COMPLAINT and Exhibits A-F against Joel Sereboff, Marlene Sereboff, John Stein, The Boccardo Law Firm, LLP (Filing fee S 150

		receipt number 1196894.), filed by Mid Atlantic Medical Services, Inc.(raf, Deputy Clerk) Additional attachment(s) added on 8/5/2003 (raf, Deputy Clerk). (Entered: 08/05/2003)
08/05/2003	2	MOTION for Preliminary Injunction, MOTION for Temporary Restraining Order by Mid Atlantic Medical Services, Inc. (Attachments: # 1 Memorandum in Support# 2 Text of Proposed Order)(raf, Deputy Clerk) (Entered: 08/05/2003)
08/05/2003	3	Summons Issued (20 days) as to Joel Sereboff, Marlene Sereboff, John Stein, The Boccardo Law Firm, LLP. (raf, Deputy Clerk) (Entered: 08/05/2003)
08/05/2003	4	Correspondence from the Clerk re: warning letter. (raf, Deputy Clerk) (Entered: 08/05/2003)
08/07/2003	5	MOTION to Appear Pro Hac Vice the admission of Holly J. Schimmel by Mid Atlantic Medical Services, Inc.. (eg, Deputy Clerk) (Entered: 08/07/2003)
08/07/2003	6	MARGINAL ORDER granting 5 Motion to Appear Pro Hac Vice the admission of Holly J. Schimmel; FEE PAID. Signed by Clerk on 8/7/03. (eg, Deputy Clerk) (Entered: 08/07/2003)

08/11/2003	7	STIPULATION re 2 MOTION for Preliminary Injunction MOTION for Temporary Restraining Order *Order Granting Stipulation to Preserve Funds, Withdraw Motion for a Preliminary Injunction, and Briefing Schedule* by Mid Atlantic Medical Services, Inc.. (Stawinski, Michelle) (Entered: 08/11/2003)
08/13/2003	8	MOTION to Appear Pro Hac Vice the admission of Thomas H. Lawrence by Mid Atlantic Medical Services, Inc.. (eg, Deputy Clerk) (Entered: 08/13/2003)
08/13/2003	9	MARGINAL ORDER granting 8 Motion of Mid Atlantic Medical Services, Inc. to Appear Pro Hac Vice the admission of Thomas H. Lawrence. Signed by Clerk on 8/13/03. (SEE DOCUMENT #8)(eg, Deputy Clerk) (Entered: 08/13/2003)
08/26/2003	10	ORDER granting 2 Motion for Preliminary Injunction, granting 2 Motion for TRO. Signed by Judge J. Frederick Motz on 8/5/03. (eg, Deputy Clerk) (Entered: 08/26/2003)
08/26/2003	11	MARGINAL ORDER APPROVING 7 Stipulation, filed by Mid Atlantic Medical Services, Inc.. Signed by Judge J. Frederick Motz on 8/11/03. (eg, Deputy Clerk) (Entered:

		08/26/2003)
08/27/2003	12	NOTICE by Mid Atlantic Medical Services, Inc. *of Partial Dismissal Without Prejudice* (Stawinski, Michelle) (Entered: 08/27/2003)
08/29/2003	13	PAPERLESS ORDER APPROVING 12 Notice of Partial Dismissal, without prejudice filed by Mid Atlantic Medical Services, Inc.. per Judge Andre M Davis on 8/29/03. (eg, Deputy Clerk) (Entered: 08/29/2003)
09/04/2003	14	STIPULATION *of Facts (Jointly Submitted)* by Mid Atlantic Medical Services, Inc.. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3 - 4# 4 Exhibit 5 - 8# 5 Exhibit 9 - 11# 6 Exhibit 12 - 14# 7 Exhibit 15 - 17# 8 Exhibit 18 - 20# 9 Exhibit 21 - 22# 10 Exhibit 23 - 25# 11 Exhibit 26# 12 Exhibit 27)(Stawinski, Michelle) (Entered: 09/04/2003)
09/08/2003	15	MOTION to Appear Pro Hac Vice the admission of John C. Stein by Joel Sereboff, Marlene Sereboff. (eg, Deputy Clerk) (Entered: 09/08/2003)
09/08/2003	16	MARGINAL ORDER granting 15 Motion to Appear Pro Hac Vice the admission of John C. Stein; FEE PAID. Signed by Clerk on 9/8/03. (SEE DOCUMENT #15) (eg, Deputy

		Clerk) (Entered: 09/08/2003)
09/16/2003	17	MOTION for Summary Judgment by Mid Atlantic Medical Services, Inc.. Responses due by 10/3/2003 (Schimmel, Holly) Additional attachment(s) added on 9/17/2003 (eg, Deputy Clerk). (Entered: 09/16/2003)
09/16/2003	18	MOTION for Summary Judgment *Memorandum in Support of Plaintiff's Motion for Summary Judgment* by Mid Atlantic Medical Services, Inc.. Responses due by 10/3/2003 (Attachments: # 1 Text of Proposed Order Proposed Order Granting Plaintiff's Motion for Summary Judgment)(Schimmel, Holly) Modified on 9/17/2003 (eg, Deputy Clerk). (Filed in error/documents attached to 17 Motion) (Entered: 09/16/2003)
09/23/2003	19	MEMORANDUM in support of Defendants' MOTION to Dismiss pursuant to Rule 12(b)(6) by Joel Sereboff, Marlene Sereboff. (rec'd 9/5/03) (eg, Deputy Clerk) (Entered: 09/23/2003)
09/23/2003	20	Correspondence from Clerk re: "ECF" warning Letter to counsel. (eg, Deputy Clerk) (Entered: 09/23/2003)
09/24/2003	21	MOTION Plaintiff's Motion for Clarification by Mid Atlantic Medical

		Services, Inc.. Responses due by 10/13/2003 (Attachments: # 1 Exhibit Exhibit A to Plaintiff's Motion for Clarification# 2 Text of Proposed Order)(Schimmel, Holly) (Entered: 09/24/2003)
09/24/2003	22	NOTICE by Mid Atlantic Medical Services, Inc. *Notice of Withdrawal of Appearance as Consel* (Schimmel, Holly) (Entered: 09/24/2003)
09/25/2003	23	MOTION to Dismiss *Pursuant to Rule 12(b)(6)* by Joel Sereboff, Marlene Sereboff. Responses due by 10/13/2003 (Stein, John) (Entered: 09/25/2003)
10/03/2003	24	MEMORANDUM in Opposition re 17 MOTION for Summary Judgment *Points and Authorities in Opposition to Motion for Summary Judgment* filed by Joel Sereboff, Marlene Sereboff. Replies due by 10/17/2003. (Stein, John) Modified on 10/9/2003 (eg, Deputy Clerk). (Entered: 10/03/2003)
10/10/2003	25	Declaration of John C. Stein Re Motion for Clarification filed by Joel Sereboff, Marlene Sereboff. Replies due by 10/24/2003. (Stein, John) Modified on 10/14/2003 (eg, Deputy Clerk). (Entered: 10/10/2003)
10/13/2003	26	RESPONSE to Motion re 17 MOTION for Summary Judgment, 19

		MOTION to Dismiss, 23 MOTION to Dismiss *Pursuant to Rule 12(b)(6)* filed by Mid Atlantic Medical Services, Inc.. Replies due by 10/27/2003. (Attachments: # 1 Appendix Mid Atlantic Medical Services v. Do# 2 Appendix IBEW-NECA Southwestern Health v. Tafoya# 3 Appendix Bombardier Aerospace Employee Welfare Benefits Plan v. Ferrer, Poirot, and Wansbrough)(Stawinski, Michelle) (Entered: 10/13/2003)
10/27/2003	27	REPLY to Response to Motion re 17 MOTION for Summary Judgment, 23 MOTION to Dismiss *Pursuant to Rule 12(b)(6)*, 19 MOTION to Dismiss *DEFENDANTS? REPLY TO PLAINTIFF?S RESPONSE TO DEFENDANTS? MOTION TO DISMISS AND TO DEFENDANTS? RESPONSE TO PLAINTIFF?S MOTION FOR SUMMARY JUDGMENT* filed by Joel Sereboff, Marlene Sereboff. (Stein, John) (Entered: 10/27/2003)
12/04/2003	28	NOTICE by Mid Atlantic Medical Services, Inc. re 17 MOTION for Summary Judgment, 19 MOTION to Dismiss, 23 MOTION to Dismiss *Pursuant to Rule 12(b)(6)*, 24 Response to Motion,, 26 Response to Motion,, 27 Reply to Response to

		Motion, *of Supplemental Authority* (Attachments: # 1 Supplement Plumbers and Steamfitters v. Books)(Stawinski, Michelle) (Entered: 12/04/2003)
12/22/2003	29	NOTICE by Mid Atlantic Medical Services, Inc. re 17 MOTION for Summary Judgment, 19 MOTION to Dismiss, 23 MOTION to Dismiss *Pursuant to Rule 12(b)(6)*, 24 Response to Motion,, 26 Response to Motion,, 27 Reply to Response to Motion, (Attachments: # 1 Exhibit A for Notice of Filing Supplemental Authority# 2 Exhibit B to Notice of Filing Supplemental Authority)(Lawrence, Thomas) (Entered: 12/22/2003)
01/27/2004	30	MEMORANDUM OPINION. Signed by Judge Andre M Davis on 1/26/04. (Attachments: # 1 Stipulation of Facts)(eg, Deputy Clerk) (Entered: 01/27/2004)
01/27/2004	31	DECLARATORY JUDGMENT AND ORDER granting in part and denying in part 17 Motion of plaintiff for Summary Judgment, denying 23 Motion of defendants' to Dismiss ; DIRECTING that on or before 2/9/04 Joel Sereboff and Marlene Sereboff shall pay over to plaintiff or Designee the sum of $74,869.37 with interest at

		the rate of 6% annum dating from 3/12/03; $26,123.15 (cost and litigation expense); Reasonable Attorney Fees of 25% of the total recovery ($750,000), without prejudice as therein set forth. Signed by Judge Andre M Davis on 1/26/04. (eg, Deputy Clerk) (Entered: 01/27/2004)
02/09/2004	32	MOTION for Attorney Fees by Mid Atlantic Medical Services, Inc.. Responses due by 2/26/2004 (Lawrence, Thomas) (Entered: 02/09/2004)
02/24/2004	33	NOTICE OF APPEAL by Joel Sereboff, Marlene Sereboff. Filing fee $ 255 Receipt No. 1202023. Appeal Record due by 3/25/2004. (Stein, John) Modified on 3/10/2004 (sls, Deputy Clerk). (Entered: 02/24/2004)
03/08/2004	41	NOTICE OF CROSS APPEAL as to 30 Memorandum Opinion, 31 Order on Motion for Summary Judgment, Order on Motion to Dismiss, by Mid Atlantic Medical Services, Inc.. Filing fee $ 255, receipt number 1202205. (sls, Deputy Clerk) Additional attachment(s) added on 4/1/2004 (cags, Deputy Clerk). (Entered: 04/01/2004)
03/10/2004		Transmission of Notice of Appeal and

		Docket Sheet to US Court of Appeals re 33 Notice of Appeal (sls, Deputy Clerk) (Entered: 03/10/2004)
03/13/2004	34	Memorandum re 32 MOTION for Attorney Fees filed by Mid Atlantic Medical Services, Inc.. (Attachments: # 1 # 2)(Lawrence, Thomas) (Entered: 03/13/2004)
03/15/2004		USCA Case Number 04-1336 for 33 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff. (Case Manager - Anthony Webb) (sls, Deputy Clerk) (Entered: 03/23/2004)
03/17/2004	35	MOTION Contempt by Mid Atlantic Medical Services, Inc.. Responses due by 4/5/2004 (Lawrence, Thomas) (Entered: 03/17/2004)
03/17/2004	36	Memorandum re 35 MOTION Contempt filed by Mid Atlantic Medical Services, Inc.. (Attachments: # 1 # 2)(Lawrence, Thomas) (Entered: 03/17/2004)
03/21/2004	37	PAPERLESS ORDER denying 35 Motion for Contempt AS THE COURT'S ORDER IS A MONEY JUDGMENT (IN ADDITION TO A MANDATORY ORDER) UPON WHICH EXECUTION MAY ISSUE AT PLAINTIFF'S REQUEST. Signed by Judge Andre M Davis on March 22, 2004.(Judge Davis) (Entered:

		03/21/2004)
03/25/2004	38	Correspondence re: Stay (Attachments: # 1 Exhibit Order)(Stein, John) (Entered: 03/25/2004)
03/26/2004	39	Certificate of Clerk certifying the record is complete for appeal purposes re: 33 Notice of Appeal (sls, Deputy Clerk) Additional attachment(s) added on 9/30/2004 (sls, Deputy Clerk). (Entered: 03/26/2004)
03/29/2004	40	RESPONSE in Opposition *MOTION FOR ATTORNEY FEES* filed by Joel Sereboff, Marlene Sereboff. Replies due by 4/12/2004. (Stein, John) (Entered: 03/29/2004)
04/01/2004		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 41 Notice of Cross Appeal (sls, Deputy Clerk) (Entered: 04/01/2004)
04/02/2004	42	NOTICE of Appearance by John Charles Stein on behalf of Joel Sereboff, Marlene Sereboff (Stein, John) (Entered: 04/02/2004)
04/07/2004	43	ORDER of USCA CONSOLIDATING USCA # 04-1336 and USCA # 04-1403 for purposes of briefing and oral argument as to 33 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff, 41 Notice

		of Cross Appeal, filed by Mid Atlantic Medical Services, Inc. (c/s) (ko, Deputy Clerk) Additional attachment(s) added on 11/3/2004 (ko, Deputy Clerk). (Entered: 04/07/2004)
05/10/2004	44	MEMORANDUM OPINION. Signed by Judge Andre M Davis on 5/10/04. (jnl, Deputy Clerk) (Entered: 05/10/2004)
05/10/2004	45	ORDER granting plaintiff's motion for attorney's fee, expenses and prejudgment interest; ENTERING judgment in favor plaintiff against defendants jointly and severally in the amount of $19,044.75 together with interest at the legal rate of 6% per annum dating from 3/13/04 through the date of this judgment (Interest Rate 1.55%). Signed by Judge Andre M Davis on 5/10/04. (jnl, Deputy Clerk) (Entered: 05/10/2004)
06/03/2004	46	NOTICE OF APPEAL as to 44 Memorandum Opinion, 45 Judgment on Attorney Fees, by Joel Sereboff, Marlene Sereboff. Filing fee $ 255 Receipt #1204479. Appeal Record due by 7/6/2004. (Stein, John) Modified on 6/8/2004 (sls, Deputy Clerk). (Entered: 06/03/2004)
06/08/2004		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals

		re 46 Notice of Appeal (sls, Deputy Clerk) (Entered: 06/08/2004)
06/15/2004	47	USCA Case Number 04-1722 for 46 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff. (Case Manager - Anthony Webb) (sls, Deputy Clerk) (Entered: 06/15/2004)
06/15/2004	48	ORDER of USCA "CONSOLIDATING" USCA case nos. 04-1336, 04-1403 and 04-1722 for purposes of briefing and oral argument as to 33 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff, 46 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff, 41 Notice of Cross Appeal, filed by Mid Atlantic Medical Services, Inc. (sls, Deputy Clerk) Additional attachment(s) added on 9/30/2004 (sls, Deputy Clerk). (Entered: 06/15/2004)
05/05/2005	49	JUDGMENT of USCA (certified copy)"AFFIRMING" in part "VACATING" inpart the judgment of the District Court and "REMANDING" to the District Court for further proceedings consistent with the Court's opinion as to 33 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff, 46 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff, 41 Notice of Cross Appeal, filed by Mid Atlantic Medical Services, Inc., (sls,

		Deputy Clerk) (Entered: 05/05/2005)
06/02/2005	50	ORDER of USCA "DENYING" petition for rehearing and rehearing en banc as to 46 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff (sls, Deputy Clerk) (Entered: 06/03/2005)
06/10/2005	51	MANDATE of USCA as to 46 Notice of Appeal filed by Joel Sereboff,, Marlene Sereboff, (sls, Deputy Clerk) (Entered: 06/13/2005)
06/10/2005	52	ORDER of USCA "AWARDING" appellee costs in the amount of $329.50 as to 46 Notice of Appeal filed by Joel Sereboff, Marlene Sereboff, (sls, Deputy Clerk) Additional attachment(s) added on 6/13/2005 (sls, Deputy Clerk). (Entered: 06/13/2005)

General Docket
US Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 04-1336 Filed: 3/18/04
Nsuit: 3791 Labor: E.R.I.S.A.
Mid Atlantic Medical, et al v. Sereboff, et al
Appeal from: District of Maryland at Baltimore

- -

Lower court information:
District: 0416-1 : CA-03-2269-AMD-1

Court Reporter: Stephanie Savoy, Court Reporter Coordinator
Involved Judge: J. Frederick Motz, District Judge
Presiding Judge: Andre M. Davis, District Judge
Date Filed: 8/5/03
Date order/judgment: 1/27/04
Date NOA filed: 2/24/04

- -

Fee status: Paid

- -

Prior cases:
None
Current cases:

	Lead	Member	Start	End
Consolidated:				
	04- 1336	04- 1722	6/14/04	
Cross-appeal:				
	04- 1336	04- 1403	4/6/04	

Docket as of January 12, 2006 0:04 am Page 1

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

MID ATLANTIC MEDICAL SERVICES LLC	Thomas Humphrey Lawrence, III FAX 901-844-4435 901-844-4430 Suite 1717 [COR NTC RET] LAWRENCE AND RUSSELL LLP 5050 Poplar Avenue Memphis, TN 38157

v.

JOEL SEREBOFF Defendant - Appellant	John Charles Stein FAX 408-298-7503 408-298-5678 Suite 1100 [COR NTC RET] THE BOCCARDO LAW FIRM LLP 111 West St. John Street San Jose, CA 95113
MARLENE SEREBOFF Defendant - Appellant	John Charles Stein (See above) [COR NTC RET]

SECRETARY OF LABOR Amicus Supporting Appellee	Elizabeth Hopkins FAX 202-693-5610 202-693-5584 Room N-4611 [NTC GVT] Timothy David Hauser; Senior Trial Attorney 202-219-8637 Room No. N-4611 [OBR] Howard Marc Radzely FAX 202-693-5278 202-693-5260 Room S-2002 [OBR] UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Salvador P. Simao
FAX 202-693-5610
202-693-5607
[COR NTC GVT]

Docket as of January 12, 2006 0:04 am Page 2

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

UNITED STATES DEPARTMENT
OF LABOR
P. O. Box 1914
Washington, DC 20013

Docket as of January 12, 2006 0:04 am Page 3

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

3/18/04	Civil case docketed. (aweb) [04-1336]
3/18/04	Docketing notice issued. [04-1336] ~ [3952067] (aweb) [04-1336]
3/18/04	Docketing statement filed by Appellant Joel Sereboff, Appellant Marlene Sereboff [3952072-1] T/S needed [Y/N]: No T/S already on file?: No. [04-1336] ~ [3952072] (aweb)[04-1336]
3/18/04	Briefing order filed. Copies to all parties. [04-

1336] ~ [3952076] Appellant(s) brief/joint appendix due 4/27/04 for Marlene Sereboff, for Joel Sereboff. (aweb)[04-1336]

3/29/04 Certification of ROA complete and retained in the District Court. [04-1336] ~ [3958327] (aweb) [04-1336]

3/31/04 ORDER FILED [3959765] to extend time to file appellant(s) brief/appendix until 5/10/04 [3959765-1]. Appellant(s) brief/joint appendix now due 5/10/04 for Marlene Sereboff, for Joel Sereboff. Copies to all parties. [04-1336] ~ [3959765] (aweb) [04-1336]

4/1/04 Positive disclosure statement filed by Appellee Mid Atlantic Medical. [04-1336] (aweb) [04-1336]

4/1/04 Counsel of record form filed by Thomas Humphrey Lawrence for Appellee Mid Atlantic Medical. (aweb) [04-1336]

4/5/04 Counsel of record form filed by John Charles Stein for Appellant Joel Sereboff, Appellant Marlene Sereboff. (aweb)[04-1336]

4/6/04 Negative disclosure statement filed by Appellant Joel Sereboff, Appellant Marlene Sereboff [04-1336] (aweb) [04-1336]

4/6/04 ORDER FILED [3962352] consolidating case 04-1403 with 04-1336 [3962352-1]. XAP Appellant: Sereboff Copies to all parties. [04-1336, 04-1403] ~ [3962352] (aweb) [04-1336 04-1403]

4/6/04 Docketing notice issued. [04-1403] ~ [3962382] (aweb) [04-1403]

4/6/04 ORDER FILED [3962395] [3962395-1] rescinding briefing order dated 3/18/04 Copies to

all parties. [04-1336, 04-1403] ~ [3962395] (aweb) [04-1336 04-1403]

Docket as of January 12, 2006 0:04 am Page 4

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

4/6/04 Cross-appeal briefing order filed. [04-1336, 04-1403] ~ [3962399] Appellant(s) cross-brief/joint appendix due 5/17/04 for Marlene Sereboff in 04-1336, for Joel Sereboff in 04-1336, for Marlene Sereboff in 04-1403, for Joel Sereboff in 04-1403. (aweb) [04-1336 04-1403]

5/3/04 ORDER FILED [3977543] to extend time to file appellant(s) cross-brief appendix until 5/31/04 [3977543-1]. Appellant(s) cross-brief joint appendix now due 6/1/04 for Marlene Sereboff in 04-1336, for Joel Sereboff in 04-1336, for Marlene Sereboff in 04-1403, for Joel Sereboff in 04-1403 . Copies to all parties. [04-1336, 04-1403] ~ [3977543] (aweb) [04-1336 04-1403]

5/28/04 Motion filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403 to extend time to file appellant(s) cross-brief appendix until 6/4/04 [3992305-1]. [04-1336, 04-1403] ~ [3992305] (aweb) [04-1336 04-1403]

6/2/04 ORDER FILED [3993196] granting motion to ext time to file a's xbrapx [3992305-1] Appellant(s) cross-brief joint appendix now due 6/4/04 for Joel Sereboff in 04-1336, for Marlene Sereboff in 04-1336, for Joel Sereboff in 04-1403, for Marlene

Sereboff in 04-1403 . in 04-1336, 04-1403 Copies to all parties. [04-1336, 04-1403] ~ [3993196] (aweb) [04-1336 04-1403]

6/4/04 Cross-brief and joint appendix filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403. Copies of brief: 8 # brf pages: 73. Copies of apx: 6 # apx pages: 316 Sufficient[Y/N]?: Y 2-sided copying[Y/N]?: Y. N. Method of filing w/ court: HD Date of Service on parties: 6/4/04 Type of service on parties: PM Appellee cross-brief due 7/7/04 for Mid Atlantic Medical in 04-1336, for Mid Atlantic Medical in 04-1403 . [04-1336, 04-1403] ~ [3996251] (aweb) [04-1336 04-1403]

6/14/04 Docketing notice issued. [04-1722] ~ [3998861] (aweb) [04-1722]

6/14/04 ORDER FILED [3998877] consolidating case 04-1722 with 04-1336 [3998877-1]. XAP Appellant: Joel & Marlene Sereboff Copies to all parties. [04-1336, 04-1403, 04-1722] ~ [3998877] (aweb) [04-1336 04-1403 04-1722]

6/18/04 Docketing statement filed by Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 [4002739-1] T/S needed [Y/N]: No . [04-1722] ~ [4002739] (aweb) [04-1722]

7/6/04 Supplemental cross-brief filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722. Copies of brief: 8 # brf pages: 17. Sufficient[Y/N]?: Y SEALED[Y/N]?: N Method of filing w/ court: HD Date of Service on parties: 7/6/04 Type of service on parties: PM [04-1336, 04-1403, 04-1722] (dhb) [04-1336 04-1403 04-1722]

7/9/04 Consent filed by Secretary of Labor in 04-1336, Secretary of Labor in 04-1403, Secretary of Labor in 04-1722 to file amicus brief. Amicus brief tendered?(Y/N): Y. [4014530-1] Party/parties filing the amicus brief: Secretary of Labor [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

7/9/04 Amicus curiae brief filed by Amicus Supporting Appellee Secretary of Labor in 04-1336 Copies of brief: 8 # br pages: 27 Sufficient[Y/N]?: Y. N. Method of filing w/court: CD Date of Service on parties: 7/9/04 Type of service on parties: PM [04-1336] ~ [4014558] (aweb) [04-1336]

7/26/04 Appearance form filed by Salvador P. Simao for Amicus Supporting Appellee Secretary of Labor in 04-1336. [04-1336] (aweb) [04-1336]

8/6/04 Cross-brief filed by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in 04-1403, Appellee Mid Atlantic Med LLC in 04-1722. Copies of brief: 8 # brf pages: 142. Sufficient[Y/N]?: N – improper addendum material. SEALED[Y/N]?: N. Method of filing w/ court: CD Date of Service on parties: 8/6/04

Type of service on parties: PM Appellant cross-reply brief due 9/8/04 for Joel Sereboff in 04-1336, for Marlene Sereboff in 04-1336, for Joel Sereboff in 04-1403, for Marlene Sereboff in 04-1403, for Joel Sereboff in 04-1722, for Marlene Sereboff in 04-1722 . [04-1336, 04-1403, 04-1722] ~ [4031673] (aweb) [04-1336 04-1403 04-1722]

8/9/04 Motion filed by Appellee Mid Atlantic Medical in 04-1336, Appellant Mid Atlantic Medical in 04-1403, Appellee Mid Atlantic Medical in 04-1722 to amend caption [4031651-1]. [04-1336, 04-1403, 04-1722] ~ [4031651] (aweb) [04-1336 04-1403 04-1722]

8/10/04 ORDER FILED [4031654] granting motion to amend/amending caption [4031651-1] in 04-1336, 04-1403, 04-1722 Copies to all parties. [04-1336, 04-1403, 04-1722] ~ [4031654] (aweb) [04-1336 04-1403 04-1722]

8/10/04 Notice non-compliant brief filed by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in 04-1403, Appellee Mid Atlantic Med LLC in 04-1722. Why?: Improper addendum material . FORMAT. [04-1336, 04-1403, 04-1722] ~ [4031675] Sufficient brief due on 8/20/04 for Mid Atlantic Med LLC in 04-1336, for Mid Atlantic Med LLC in 04-1403, for Mid Atlantic Med LLC in 04-1722 (aweb) [04-1336 04-1403 04-1722]

8/18/04 Motion filed by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in

04-1403, Appellee Mid Atlantic Med LLC in 04-1722 to file brief in its present form [4036277-1]. [04-1336, 04-1403, 04-1722] ~ [4036277] (mst) [04-1336 04-1403 04-1722]

8/18/04 ORDER FILED [4036638] granting motion to file brief as is [4036277-1] in 04-1336, 04-1403, 04-1722 Copies to all parties. [04-1336, 04-1403, 04-1722] ~ [4036638] (mst) [04-1336 04-1403 04-1722]

8/18/04 Brief made sufficient by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in 04-1403, Appellee Mid Atlantic Med LLC in 04-1722 per order filed 8/18/04. [04-1336, 04-1403, 04-1722] ~ [4036658] (mst) [04-1336 04-1403 04-1722]

8/18/04 Response/answer filed [4036753-1] by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 to motion to file brief as is [4036277-1] in 04-1722, 04-1403, 04-1722 [04-1336, 04-1403, 04-1722] ~ [4036753] (aweb) [04-1336 04-1403 04-1722]

8/18/04 Motion filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 to extend time to file appellant(s) cross-reply brief until 9/1/04 [4036755-1]. [04-1336, 04-1403, 04-1722] ~ [4036755] (aweb) [04-1336 04-1403 04-1722]

8/19/04 Informal action taken mooting motion to ext time to f A's xrpl br [4036755-1] in 04-1336, 04-1403,

04-1722 [04-1336, 04-1403, 04-1722] ~
[4036758] (aweb) [04-1336 04-1403 04-1722]

Docket as of January 12, 2006 0:04 am Page 7

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

9/8/04 Cross-reply brief filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722. Copies of brief: 8 # brf pages: 32 Sufficient[Y/N]?: N. SEALED[Y/N]?: N. Method of filing w/ court: HD Date of Service on parties: 9/8/04 Type of service on parties: PM [04-1336, 04-1403, 04-1722] ~ [4047521] (aweb) [04-1336 04-1403 04-1722]

9/9/04 Notice non-compliant brief filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722. Why?: No Summary of Argument Cover should be red. FORMAT. [04-1336, 04-1403, 04-1722] ~ [4047526] Sufficient brief due on 9/20/04 for Joel Sereboff in 04-1336, for Marlene Sereboff in 04-1336, for Joel Sereboff in 04-1403, for Marlene Sereboff in 04-1403, for Joel Sereboff in 04-1722, for Marlene Sereboff in 04-1722 (aweb) [04-1336 04-1403 04-1722]

9/20/04 Brief made sufficient by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403,

Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722. Number of brf pages: 45. [04-1336, 04-1403, 04-1722] ~ [4054481](aweb) [04-1336 04-1403 04-1722]

9/24/04 Case tentatively calendared for oral argument Term: November 30 - December 3, 2004 Place: Richmond. NOTIFY OF CONFLICT BY: October 1, 2004. [04-1131, 04-1200, 04-1132, 04-1137, 04-1157, 04-1168, 04-1191, 04-1205, 04-1257, 04-1262, 04-1271, 04-1472, 04-1277, 04-1314, 04-1328, 04-1336, 04-1403, 04-1722, 04-1338, 04-1342, 04-1344, 04-1357, 04-1371, 04-1376, 04-1378, 04-1391, 04-1395, 04-1729, 04-1405, 04-1411, 04-1408, 04-1439, 04-1441, 04-1459, 04-1469, 04-1471, 04-1476, 04-1480, 04-1502, 04-1520, 04-1535, 04-1559, 04-1562, 04-1697, 04-1576, 04-1586, 04-1616, 04-1642, 04-1758, 04-1643, 04-1646, 04-1652, 04-1687, 04-1708, 04-1710, 04-1753, 04-1818, 04-4001, 04-4112, 04-4227, 04-4230, 04-4250, 04-4260, 04-4311, 04-4320, 04-4353, 04-4367, 04-6130, 04-6473, 04-6481, 04-6500, 04-6531, 04-6607] ~ [4057296] (jlc) [04-1131 04-1132 04-1137 04-1157 04-1168 04-1191 04-1200 04-1205 04-1257 04-1262 04-1271 04-1277 04-1314 04-1328 04-1336 04-1338 04-1342 04-1344 04-1357 04-1371 04-1376 04-1378 04-1391 04-1395 04-1403 04-1405 04-1408 04-1411 04-1439 04-1441 04-1459 04-1469 04-1471 04-1472 04-1476 04-1480 04-1502 04-1520 04-1535 04-1559 04-1562 04-1576 04-1586 04-1616 04-1642 04-1643 04-1646 04-1652 04-1687

04-1697 04-1708 04-1710 04-1722 04-1729 04-1753 04-1758 04-1818 04-4001 04-4112 04-4227 04-4230 04-4250 04-4260

Docket as of January 12, 2006 0:04 am Page 8

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

04-4311 04-4320 04-4353 04-4367 04-6130 04-6473 04-6481 04-6500 04-6531 04-6607]

9/27/04 Cross-reply brief filed by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in 04-1403, Appellee Mid Atlantic Med LLC in 04-1722. Copies of brief: 8 # brf pages: 18. Sufficient [Y/N]: Y. SEALED?[Y/N]: N. Method of filing w/ court: CD Date of Service on parties: 9/27/04 Type of service on parties: CD [04-1336, 04-1403, 04-1722] ~ [4059675] (aweb) [04-1336 04-1403 04-1722]

10/15/04 Case calendared for oral argument. Case calendared for oral argument on: 12/1/04. [04-1336, 04-1403, 04-1722] ~ [4069268] (jc) [04-1336 04-1403 04-1722]

11/8/04 Motion filed by Amicus Supporting Appellee Secretary of Labor in 04-1336 to participate in oral argument [4083358-1]. ~ [4083358] [04-1336] (aweb) [04-1336]

11/8/04 Response/answer requested to motion to participate in oral arg [4083358-1] Response/answer due 11/18/04 for Mid Atlantic Med LLC, for Joel Sereboff, for Marlene

Sereboff. [04-1336] ~ [4083654] (aweb) [04-1336]

11/16/04 Response/answer filed [4087650-1] by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in 04-1403, Appellee Mid Atlantic Med LLC in 04-1722 to motion to participate in oral arg [4083358-1] in 04-1722 [04-1336, 04-1403, 04-1722] ~ [4087650] (dhb) [04-1336 04-1403 04-1722]

11/17/04 Response/answer filed [4089082-1] by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 to motion to participate in oral arg [4083358-1] in 04-1722 [04-1336, 04-1403, 04-1722] ~ [4089082] (mst) [04-1336 04-1403 04-1722]

11/23/04 COURT ORDER filed [4091951] granting Secretary of Labor's motion to participate in oral argument for 7 minutes on time ceded by appellee/cross-appellant [4083358-1] in 04-1336 Copies to all parties. [4091951] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

11/30/04 Calendar update. Argument date: 12/2/04. [04-1336, 04-1403, 04-1722] (jc) [04-1336 04-1403 04-1722]

11/30/04 COURT ORDER filed [4094669] to reschedule oral argument for 12/2/04 [4094669-1]. Copies to all parties. ~ [4094669] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

12/2/04 Oral argument heard. Panel: Honorable H. E. Widener, Honorable Robert B. King, Honorable

Henry F. Floyd. Courtroom Deputy: JLC, Jr..
[04-1336, 04-1403, 04-1722] (jc)

04-1336 Mid Atlantic Medical, et al v. Sereboff, et al

[04-1336 04-1403 04-1722]

12/30/04 Supplemental authorities (FRAP 28(j)) filed by Appellee Mid Atlantic Med LLC in 04-1336, Appellant Mid Atlantic Med LLC in 04-1403, Appellee Mid Atlantic Med LLC in 04-1722 [4109651-1] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

1/13/05 Supplemental authorities (FRAP 28(j)) filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 [4116705-1] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

4/26/05 Supplemental authorities (FRAP 28(j)) filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 [4175652-1] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

5/4/05 Published, authored opinion filed. Copies to all parties. [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

5/4/05	Judgment order filed. Decision: Affirmed in part, Vacated in part, and remanded. EOD Date: 5/4/05. ~ [4180375] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]
5/17/05	Petition filed by Appellant Marlene Sereboff in 04-1336, Appellant Joel Sereboff in 04-1336, Appellee Marlene Sereboff in 04-1403, Appellee Joel Sereboff in 04-1403, Appellant Marlene Sereboff in 04-1722, Appellant Joel Sereboff in 04-1722 for rehearing. Number copies filed: 20 [4187387-1]., for rehearing en banc. Number of copies filed: 20 [4187387-2] ~ [4187387] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]
5/18/05	Bill of costs filed by Mid Atlantic. [4188469-1] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]
6/1/05	COURT ORDER filed [4194688] denying motion for rehearing [4187387-1] EOD Date: 6/1/05. in 04-1336, 04-1403, 04-1722, denying motion for rehearing en banc [4187387-2] EOD Date: 6/1/05. in 04-1336, 04-1403, 04-1722 Copies to all parties. ~ [4194688] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]
6/9/05	ORDER filed awarding costs in the amount of $329.50 to Mid-Atlantic. [04-1336, 04-1403, 04-1722] ~ [4199545] (aweb) [04-1336 04-1403 04-1722]
6/9/05	Mandate issued. ~ [4199551] [04-1336, 04-1403, 04-1722] (aweb) [04-1336 04-1403 04-1722]

9/1/05	Supreme Court notice that petition for certiorari was filed on 08/25/05. Spct No.: 05-260 Spct Pty 1: Joel Sereboff, et ux Spct Pty 2: Mid Atlantic Medical Services. [04-1336, 04-1403, 04-1722] ~ [4247126] (dhb) [04-1336 04-1403 04-1722]
12/2/05	Supreme Court order received granting petition certiorari [4247126-1] on 11/28/05. in 04-1336, petition certiorari [4247126-1] on 11/28/05. in 04-1403, petition certiorari [4247126-1] on 11/28/05. in 04-1722 [04-1336, 04-1403, 04-1722] ~ [4301392] (jhm) [04-1336 04-1403 04-1722]
1/10/06	A's and 2 E's, Amicus and Reply Briefs released to Lantagne for copies. [04-1403, 04-1722] for copies . [04-1336, 04-1403, 04-1722] (ad) [04-1336 04-1403 04-1722]
1/11/06	E's cross reply brief released to Lantagne for copying . [04-1336, 04-1403, 04-1722] (rba) [04-1336 04-1403 04-1722]

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2003 AUG – 5 P 1:05

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC.,	
Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP,	03CV2269 Case No.
Defendants	

VERIFIED COMPLAINT

Plaintiff, Mid Atlantic Medical Services, Inc. ("Plaintiff"), pleads as follows:

1. This action is to enforce the terms of the MAMSI Life and Health Insurance PPO Plan (the "Plan") and for equitable relief arising under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, et seq.

PARTIES

2. Plaintiff is a fiduciary of the Plan, which is sponsored by Katzen Eye Group, and, as such, is entitled to bring this action pursuant to 29 U.S.C. § 1132(a)(3).

3. Upon information and belief, Defendant Joel Sereboff is a citizen and resident of Baltimore County, Maryland. Defendant Sereboff's address is 2215 Millridge Road, Owings Mills, Maryland 21117.

4. Upon information and belief, Defendant Marlene Sereboff is a citizen and resident of Baltimore County, Maryland. Defendant Joel Sereboff's address is 2215 Millridge Road, Owings Mills, Maryland 21117.

5. Upon information and belieft Defendant John Stein is a citizen and resident of Santa Clara County, California and a member of The Boccardo Law Firm, LLP. Defendant Stein's address is 111 West St. John Street, Eleventh Floor, San Jose, California 95115-0001

6. Upon information and belief, Defendant The Boccardo Law Firm, LLP ("Boccardo Law Firm") is a business in Santa Clara County, California with its principal place of business being 111 West St. John Street, Eleventh Floor, San Jose, California 95115-0001

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this action is to enforce provisions of the Plan arising under ERISA. The Court has jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

8. Pursuant to 29 U.S.C. § 1132(e)(2), venue is proper in this Court because the plan is administered in this

district and, alternatively, violation of the Plan's terms is occurring in this district,

FACTUAL ALLEGATIONS

9. Defendants Joel Sereboff and Marlene Sereboff (the "Sereboffs") are "Covered Persons" under the Plan.

10. The Sereboffs were injured in a personal injury accident on June 22, 2000, and sought to recover from the parties who caused those injuries.

11. In connection with the injuries suffered by Defendant Marlene Sereboff, the Plan paid medical benefits on her behalf in the amount of $73,778.26.

12. In connection with the injuries suffered by Defendant Joel Sereboff, the Plan paid medical benefits on his behalf in the amount of $1.091.11

13. The Plan contains an acts of third parties provision, which states:

> ACTS OF THIRD PARTIES
>
> This subrogation provision applies when you are sick or injured as a result of the act or omission of another person or party .
>
> Subrogation means the Company's right to recover any payments made to you or your dependent by a third party or any insurer acting in place of, or on behalf of a third party or a third party's insurer. because of an injury or illness caused by a third party. Third party means another person or organization.
>
> If you or your dependent receives benefits and have a right to recover damages from a

> third party, the Company is subrogated to this right. All recoveries from a third party (whether by lawsuit, settlement, or otherwise) must be used to reimburse the Company net of reasonable attorney fees and court costs prorated to reflect that portion of the total recovery which is due the Company for benefits paid. Any remainder will be yours or your dependents. The Company's share of the recovery will not be reduced because you or your dependent has not received the full damages claimed, unless the Company agrees in writing to a reduction.
>
> You must promptly advise the Company whenever a claim is made against a third party with respect to any loss for which the Company benefits have been or will be paid. You or your dependent must execute any assignments, liens or other documents and provide information as the Company requests. MLH's benefits may be withheld until documents or information are received. If you need more information about subrogation, the Company will provide you with its subrogation procedures.

14. Upon information and belief, the Sereboffs settled claims relating to the June 22, 2000, accident in February, 2003, for an amount in excess of the Plan's reimbursement interest.

15. Plaintiff has requested that Defendant Marlene Sereboff reimburse the Plaintiff in the amount of

$73, 778.26 pursuant to the terms of the Plan, but she has refused to do so.

16. Plaintiff has requested that Defendant Joel Sereboff reimburse the Plaintiff in the amount of$1,O91.11 pursuant to the terms of the Plan, but he has refused to do so.

17. Defendants Stein and his firm, Boccardo Law Firm, are being named as Defendant stakeholders since these Defendants, on information and belief, represented the Sereboffs and disbursed a portion of the settlement funds to themselves and the Sereboffs despite notice from Plaintiff of its reimbursement interest in the amount of $74,869.37 from settlement funds obtained on behalf of the Sereboffs relating to their June 22, 2000, injuries. To the extent the funds have been dissipated, Plaintiff brings state law tort claims against Defendants Stein and Boccardo Law Firm.

18. Upon information and belief, some of these disbursed funds may have been dissipated by the Sereboffs.

The disbursement by Defendants Stein and Boccardo Law Firm has put the disputed funds at immjnent risk of being placed beyond the Court's ERISA jurisdiction.

I. TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

20. Pursuant to Fed. R. Civ. P. 65, Plaintiff is entitled to a temporary restraining order and, upon notice and hearing, Plaintiff is entitled to a preliminary injunction enjoining Defendants, and all those acting in concert or participating with them from disposing of the settlement funds, or whatever portion of those funds have not been dissipated pending a final determination by this Court. If Defendants are able to place these monies beyond the reach

of Court, then they may deprive the Court of the ability to impose an equitable remedy under ERISA

II. ENFORCEMENT OF THE TERMS OF THE PLAN

Pursuant to 29 U.S.C. § 1132(&)(3), Plaintiff seeks equitable relief, including, but not limited to, restitution, imposition of a constructive trust, and declaration of rights under the Plan against Defendants to enforce ERISA and the terms of the Plan

22 By refusing to cooperate with the Plan to protect its rights and refusing to reimburse the Plan to the extent of benefits paid on behalf of the Sereboffs out of the amount the Sereboffs recovered, Defendants have violated the terms of the Plan.

Since these acts and/or practices violate the Plan's terms, this Court should enter an order declaring the Plan's rights to the disputed funds and enter an order in restitution enforcing the terms of the Plan by requiring Defendants to turn over the $74,869.37 to the Plan.

III. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

The Plaintiff had a contractual relationship with the Sereboffs. Defendants Stein and Boccardo Law Firm willfully and intentionally interfered with the Plaintiffs contractual relations with the Sereboffs.

25. Defendants Stein and Boccardo Law Firm's conduct in negotiating the settlement check and in failing to reimburse the Plan, despite having knowledge of Plaintiffs claim, was a proximate cause of the Plan's damages.

26. The Plan has been damaged in the amount of $74,869.37 because of Defendants Stein and Boccardo Law Firm's conduct.

IV. CONVERSION

27. Defendants Stein and Boccardo Law Firm received the settlement payment for the Sereboffs. Defendants Stein and Boccardo Law Firm intentionally and wrongfully asserted dominion and control over the settlement payment, inconsistent with the Plan's ownership over the settlement payment.

Defendants Stein and Boccardo Law Firm failed to preserve the sufficient amount of funds from the settlement proceeds to satisfy the Plan's lien and reimbursement interest of $74,869.37.

V. PRAYER FOR RELIEF

Plaintiff requests that the Court enter an order granting a declaratory judgment, injunction, specific performance, constructive trust, and restitution against Defendants, requiring Defendants to turn over $74,869.37 including appropriate pre-judgment and post-judgment interest, and for any other relief to which the Plan is entitled, including that the Plan be awarded reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g). To the extent the funds have been dissipated, Plaintiff seeks judgment against Defendants Stein and The Boccardo Law Firm, LLP in that amount and for punitive damages in an amount to be determined at trial.

Date: August 5, 2003.

By: _____/s/_____

[Local Counsel] Michelle Stawinski (Bar No. 15126)
Bouland & Brush, LLC
201 N. Charles Street, suite 2400
Baltimore, Maryland 21201-4108
Telephone: (410) 752-6000
Facsimile: (410) 625-3859

[Lead Counsel] Holly J. Schimmel *
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4439
Facsimile: (901) 844-4435

* Application for *Pro Hac Vice* to be filed.

VERIFICATION

I, Barry Dumser, a competent person of the full age of majority, declare:

I am employed by Mid Atlantic Medical Services, Inc., which is a fiduciary of the Plan with respect to the Plan's right of recovery for the MAMSI Life and Health Insurance PPO Plan (the "Plan"), sponsored by Katzen Eye Group. I have personal knowledge of the facts set forth in the Verified Complaint, and if called as a witness in this matter, I could and would testify competently to those facts under oath.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 8/4/03 __/s/_____

Barry Dumser

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2003 AUG – 5 P 1:06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC., Plaintiff v. JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP, Defendants	Case No. AMD03CV2269

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65, Plaintiff, Mid Atlantic Medical Services, Inc. ("Plaintiff"), moves the Court to issue a Temporary Restraining Order and a

Preliminary Injunction against Defendants Joel Sereboff and Marlene Sereboff, John Stein, and The Boccardo Law Firm, LLP ("Defendants") enjoining them from disposing of proceeds recovered as a result of the Sereboffs' June 22, 2000, accident in an amount in excess of the Plaintiffs reimbursement interest, $74,869.37. Plaintiff is also entitled to a statutory injunction under 29 U.S.C. § 1132(a)(3)(A). Plaintiff requests that, after notice and a hearing on this matter, this Court issue a preliminary injunction enjoining Defendants from dissipating the disputed funds.

Pursuant to the terms of the ERISA-covered Plan, Plaintiff is entitled to full reimbursement. While the Plan permits a "common fund" reduction for attorney reimbursement fees, the common fund doctrine is inapplicable where, as here, the Sereboffs' attorney has attempted to take the fund from Plaintiff. This Court should enter an order requiring Defendants to preserve, to the extent of Plaintiff's claim, any portions of the settlement funds remaining in bank accounts controlled by any of the Defendants until a final determination is entered by this Court. Plaintiff requests that the Court grant Plaintiff's Motion for a Temporary Restraining Order and, upon notice and a hearing, a Preliminary Injunction. A memorandum of law has been filed contemporaneously with this motion.

Date: August 5, 2003.

Respectfully submitted,

By:___/S/_____

[Local Counsel] Michelle Stawinski (Bar No. 15126)
Bouland & Brush, LLC
201 N. Charles Street, suite 2400
Baltimore, Maryland 21201-4108

Telephone: (410) 752-6000
Facsimile: (410) 625-3859

[Lead Counsel] Holly J. Schimmel *
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4439
Facsimile: (901) 844-4435

* Application for *Pro Hac Vice* to be filed.

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2003 AUG – 5 P 1:06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC.,	
Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP,	03CV2269 Case No.
Defendants	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff submits this memorandum in support of its motion for a temporary restraining order and, upon notice and hearing, a preliminary injunction.

INTRODUCTION

Defendants Marlene Sereboff and Joel Sereboff (the "Sereboff"s") are "Covered Persons" under the terms of the MAMSI Life and Health Insurance PPO Plan (the "Plan' *See* Verified Complaint, ¶ 9. The Plan is covered by the Employee Retirement Income Security Act of 1974,29 U.S.C. § 1001, etseq. ("ERISA"). Id. at ¶ 1 The Plan paid $73.778.26 in medical benefits on behalf of Defendant Marlene Sereboff because of injuries she sustained in a personal injury accident on June 22, 2000. Id. at ¶¶ 10, 11. The Plan paid $1,091.11 in medical benefits on behalf of Defendant Joel Sereboff because of injuries he sustained in the same personal injury accident on June 22, 2000. Id. at ¶¶ 10, 12. The Sereboffs have settled their claims with the parties responsible for their injuries. Id. at ¶ 14. Defendants Stein and the Boccardo Law Firm are being named as Defendant stakeholders since these Defendants disbursed some or all of the settlement funds to the Sereboffs. Id. at ¶¶ 17,18 The Plan contains an acts of third parties provision, which requires the Sereboffs to reimburse the Plan, to the extent of medical benefits paid, when they make a recovery from other parties. Id. at ¶ 13. While the Plan here provides that its reimbursement rights may be reduced by reasonable attorney's fees, the terms of the Plan also require that the Sereboffs cooperate with efforts to recover benefits paid by the Plan on their behalf. *Id.* Plaintiff has requested that Defendants abide by the terms of the Plan, but they have refused to do so. Id at ¶ 15 - 17. The disbursement by Defendant Stein and his firm has put the disputed funds at imminent risk of being placed beyond the Court's ERISA jurisdiction. Id. at ¶ 18.

Under Fed. R. Civ. P. 65, Plaintiff seeks a temporary restraining order and a preliminary injunction against Defendants, and all those in concert or participation

with them, requiring them to preserve the disputed funds, which will maintain the status quo until this Court can determine the rights and obligations of the parties, and will prevent Defendants from placing the disputed funds beyond the reach of the Court, thereby potentially preventing imposition of an equitable remedy, which is the only type of remedy available to Plaintiff under ERISA. See 29 U.S.C. § 1132(a)(3); *Great-West Life & Annuity Ins. Co. v. Knudson*, 122 S. Ct. 708 (2002).

Plaintiff has a substantial likelihood of success on the merits. Pursuant to the terms of the Plan and the Supreme Court's decision in *Knudson*, Plaintiff is entitled to full reimbursement from the Defendants to the extent of benefits paid by the Plan. While the Plan permits a reduction for attorney fees, in situations such as the one presented here, members are required to reimburse the plan in full when they fail to comply with the Plan provision.

Further, Plaintiff will suffer irreparable harm without issuance of a restraining order and, upon notice and hearing, a preliminary injunction if Defendants are able to waste and deplete the funds before this Court can impose a final equitable remedy under 29 U.S.C. § 1132(a)(3). An order enjoining Defendants from dissipating of the settlement funds is therefore necessary and appropriate.

ARGUMENTS AND AUTHORITIES

I. This Court has subject matter jurisdiction under ERISA because the Supreme Court has held that this Court may order restitution in the form of a constructive trust or equitable lien in ERISA reimbursement actions.

This Court has subject matter jurisdiction under ERISA because the Supreme Court, in *Knudson*, held that

federal courts may order restitution in the form of a constructive trust or equitable lien where monies are identifiable and in a defendant's possession. On January 8, 2002, the Supreme Court decided *Knudson*, and held that an ERISA .covered plan may enforce a reimbursement provision where, as here, the monies are identifiable and in a defendant's possession. In that case, Plaintiff Great- West had asked the Supreme Court to recognize the rights of ERISA plans and their fiduciaries to file suit in federal court to enforce reimbursement provisions, which the Court did, so long as the monies over which the plan fiduciary seeks restitution or constructive trust are being held by the defendant in the federal court lawsuit:

> In contrast, plaintiff could seek restitution in equity, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession. [citations omitted]. A court of equity could then order a defendant to transfer title (in the case of the constructive trust) or to give a security interest (in the case of the equitable lien) to a plaintiff who was, in the eyes of equity, the true owner. But where "the property [sought to be recovered] or its proceeds have been dissipated so that no product remains, [the plaintiffs] claim is only that of a general creditor," and the plaintiff "cannot enforce a constructive trust or an equitable lien upon other property of the [defendant]." Restatement of Restitution, *supra*, 215, Comment *a*, at 867. Thus for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the possession particular funds or property in the defendant's possession.

Knudson, 122 S. Ct. at 714.

The federal courts addressing ERISA reimbursement claims since *Knudson*, including the Fourth Circuit,[1] have ruled that constructive trusts or equitable liens are appropriate equitable relief under ERISA under these circumstances. In *Administrative Committee v. Varco*, 2003 U.S. App. LEXIS 14992 (7th Cir. July 29, 2003),[2] once the plaintiff learned that the defendants were attempting to abscond with the $100,000.00 in settlement proceeds, plaintiff promptly sought and obtainedemergency relief from that court.

With respect to Varco's contention that *Knudson* foreclosed the Court's authority to order equitable relief, the *Varco* court, relying upon the quote from *Knudson* cited above, stated that "Thus, under *Great-West Life*, the reimbursement action by the Committee in this unique case is equitable because the funds the Committee seeks to recover are identifiable, are in the control of a defendant, and the Committee is rightfully entitled to the monies under the terms of the Plan. Because those elements are met here, the Committee's claim is equitable under § 502(a)(3)(B) of ERISA, and the district court properly exercised federal question subject matter jurisdiction under 28 U.S.C. § 1331." *Varco*, at *16.

Similarly, in *In Re Carpenter*, No. 00-2348, 2002 U.S. App. LEXIS 10615 (4th Cir. June 3, 2002) (copy attached hereto as Exhibit A). the Court allowed equitable relief under *Knudson* where a defendant had control of identifiable funds.

---

[1] *In re Carpenter*, No. 00-2348, 2002 U.S. App. Lexis 10615 (4th Cir. June 3, 2002) (copy attached hereto as Exhibit A).

[2] A copy of the *Varco* decision is attached hereto as Exhibit B.

[3] See Temporary Restraining Order, dated December 14, 2001, and Preliminary Injunction, dated December 21, 2001, Collective Exhibit C hereto.

Also, in *Great-West Life & Annuity Ins. Co. v. Brown*, 192 F. Supp. 2d 1376 (M.D. Ga. 2002), the court distinguished Knudson and held that disputed funds were identifiable and traceable where the covered person's attorney was holding funds.

Likewise, in *Bauer v. Gylten*, 2002 U.S. Dist. LEXIS 7246 (D.N.D. Apr. 22, 2002), the federal court ruled that an ERISA plan fiduciary could pursue a reimbursement claim in the form of a constructive trust where the funds are identifiable. A copy of this decision is attached hereto as Exhibit D.

Indeed, since *Knudson*, federal courts throughout the United States have been routinely granting extraordinary relief to prevent the dissipation of funds under these circumstances. *See* Collective Exhibit E hereto for copies of decisions from this Court and other federal courts granting motions for temporary restraining orders and preliminary injunctions in ERISA reimbursement actions.

This Court should issue a temporary restraining order and, upon notice and a hearing, a preliminary injunction against Defendants to prevent them from dissipating any of the disputed funds that remain in their possession that are identifiable and traceable to the settlement proceeds recovered as a result of their injuries.

II. Defendants should be enjoined from disposing of the settlement funds until the rights of Plaintiff have been determined by this Court.

A. Plaintiff is not required to establish the traditional elements for ordering preliminary relief because injunctive relief to enforce the Plan terms is specifically authorized by 29 U.S.C. § 1132(a)(3)(A).

29 U.S.C. § 1132(a)(3)(A) provides that

> (b) Persons empowered to bring a civil action. A civil action may be brought-
>
> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan. . . .

29 U.S.C. § 1132(a)(3)(A).

Therefore, because ERISA's civil enforcement provision expressly provides participants, beneficiaries, and fiduciaries, with the power to obtain an injunction, Plaintiff is not required to establish the traditional elements for obtaining preliminary relief in order to obtain such preliminary relief.[4]

Here, 29 U.S.C. § 1132(a)(3)(A) specifically authorizes suit by a participant, beneficiary. or fiduciary "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan.." *See* 29 U.S.C. § 1132(a)(3)(A). Plaintiff's Verified Complaint establishes that the Sereboffs are violating the terms of the Plan.

B. Alternatively, Plaintiff has established the standard requirements for obtaining preliminary relief.

A Court deciding whether to grant a preliminary injunction must consider the following four factors: (1) a likelihood of irreparable harm to Plaintiff if the preliminary injunction is denied; (2) the likelihood of harm to Defendant if the requested relief is granted; (3) the

---

[4] See also *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860 (9th Cir. 1983); *Atchison, Topeka and Santa Fe Railway v. Lennen*, 640 F.2d 255, 259-61 (10th Cir. 1981); *United States v. City and County of San Francisco*, 310 U.S. 16, 30-31 (1940).

likelihood that Plaintiff will succeed on the merits, and (4) the public interest.[5] As set forth below, Plaintiff has satisfied the requirements for the issuance of a preliminary injunction.

1. Plaintiff has a strong likelihood of success on the merits of its claims.

Section 502(a)(3) of ERISA provides that a civil action may be brought by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this sub-chapter or terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress its violations or (ii) to enforce any provisions of this sub-chapter of the terms of the plan. See 29 U.S.C. § 1132(a)(3). Thus, section 502 (a) (3) (B) authorizes the Plan to bring actions to enforce plan terms and to redress violations of ERISA and the terms of the Plan. 29 U.S.C. § 1132(a)(3)(B).[6]

As with other substantive provisions of a plan, reimbursement duties are created, determined and resolved by reference to the written plan.[7] The Plan and the Sereboffs must abide by the Plan's provisions. By accepting benefits under the Plan, the participants agree to abide by

---

[5] *Scotts Co. v. United Industries Corp.*, 315 F.3d 264, 271 (4th Cir. 2002).

[6] See Blue Cross & Blue Shield of Alabama v. Sanders, 138 F.3d 1347 (11th Cir. 1998).

[7] ERISA preempts state laws that directly or indirectly relate to self-funded employee benefit plans. *See, e.g., FMC Corp. v. Holliday*, 498 U.S. 52 (1990); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985).

all its provisions.[8] Binding participants to all provisions of the Plan instead of allowing them to "pick and choose" among its provisions - is only fair and necessary. Otherwise, deductibles and co-payments could be ignored and participants could decide what eligible expenses were under the Plan.

The Plan initially pays benefits so that there is no loss to the participant. Through enforcement of that clause, the third party pays for the injuries he or she caused. The Plan's assets are then recovered by it for future claims. Thus, the Plan discharges one of its most fundamental fiduciary obligations, ensuring that Plan assets are protected so that future claims may be paid, thereby protecting all of the Plan's participants and beneficiaries.

Here, the Plan's acts of third parties provision provides for full reimbursement, to the extent of benefits paid, in situations such as the one presented here where a participant is injured by another party, medical expenses are paid by the Plan because of those injuries, the participant makes another recovery because of those injuries, and the participant fails to abide by the Plan terms. See Verified Complaint, ¶ 13. While the Plan permits a reduction for attorney's fees, both the terms of the Plan and common law contemplate that such a reduction is only appropriate where the Plan does not have to retain counsel to protect its reimbursement interest and members abide by the Plan terms.

The U.S. Supreme Court in *Hobbs v. McLean*, 117 U.S. 567 (1886) articulated the maximum that such a fee reduction in not appropriate in situations such as the one

---

[8] *Kolentus v. Avco Corp.*, 798 F .2d 949, 956 (7th Cir. 1986); *see also Gladden v. Pargas, Inc. ofWaldorf, Md.*, 575 F.2d 1091, 1093 (4th Cir. 1978); *Jacobs v. Pickands Mather& Co.*, 933 F.2d 652,656 (8th Cir. 1991).

presented here in which Defendants have obstructed the Plan's rights: "[we] see no reason why [plaintiff] should pay defendant, who, instead of aiding [plaintiff] in securing [its] rights, has been an obstacle and obstruction to their enforcement. The services for which defendant seeks pay from the [plaintiff] were not rendered in [its] behalf, but in hostility to [its] interest." *Id.* at 581.[9]

The Court will likely rule, therefore, that the Plan is entitled to 100% reimbursement because Defendants have failed to comply with the Plan provision by failing to reimburse Plaintiff according to the terms of the Plan.

Plaintiff has a likelihood of success on the merits of its claims. In all likelihood, based upon the terms of the Plan, the Court will order Defendants, and those acting in concert or participation with them, to abide by the terms of the Plan and to turn over the $74, 869.37 to Plaintiff from proceeds received from the Sereboffs' settlement with parties responsible for their injuries.[10]

The Plan seeks to enforce the provisions of ERISA which vest in the Plan administrator the exclusive authority and control of Plan assets and to enforce the Plan's terms concerning reimbursement. ERISA provides that the administrators of employee benefits plans have the exclusive authority and responsibility to control

---

[9] *See In re Paris*, No. 99-1558, 2000 U.S. App. LEXIS 6883 (4th Cir. Apr. 17, 2000) (copy attached as Exhibit F hereto) (holding that common law make-whole rule does not apply when it overrides plan terms). Here, the Plan terms not ~~only do not in~~corporate the make whole rule, but rather, specifically disclaim it by stating that "[t]he Company's share of the recovery will not be reduced because you or your dependent has not received the full damages claimed, unless the Company agrees in writing to a reduction." The make-whole rule, therefore, does not apply here.

[10] *See In Re Carpenter*, No. 00-2348, 2002 U.S. App. LEXIS 10615 (4th Cir. June 3, 2002) (allowing equitable relief under *Knudson* where a defendant had control of identifiable funds).

and manage plan assets in the best interest of all participants and beneficiaries.[11]

Here, despite being required to reimburse the Plan, the Sereboffs have violated the terms of the Plan by accepting the settlement and refusing to reimburse the Plan. The Sereboffs are seeking to avoid the effect of the Plan's terms.

2. Plaintiff will suffer irreparable injury without a preliminary injunction.

A preliminary injunction is appropriate "to prevent a defendant from making a judgment uncollectible" and thereby to "protect the possibility of [an] equitable remedy."[12] The relief that Plaintiff seeks here is purely equitable relief pursuant to ERISA, 29 U.S.C. § 1132(a)(3), as the Supreme Court and United States District Courts in the Eleventh Circuit post- *Knudson* have ruled. *See Great-West Life & Annuity Ins. Co. v. Knudson*, 122 S. Ct. 708 (2002); *Great-West v. Brown*, 192 F. Supp. 2d 1376 (M.D. Ga. 2002). As set forth below, this Court should grant Plaintiff a temporary restraining order and, upon notice and hearing, a preliminary injunction to prevent Defendants from placing any of the disputed funds in their possession beyond the reach of the Court and Plaintiff. Without a preliminary injunction, Defendants will be able to place all of the settlement monies beyond the reach of the Court and

---

[11] See 29 U.S.C. § 1102(a)(1) (the plan must be administered pursuant to a written instrument and named plan fiduciaries have authority "to control and manage the operation and administration of the Plan").

[12] *FTC v. Singer*, 668 F.2d 1107,1112 (9th Cir. 1982); *In re Marcos*, 25 F.3d 1467,1479 (9th Cir. 1994); *Republic of Philippines v. Marcos*, 806 F.2d 344,356 (2d Cir. 1986); *Seide v. Crest Color, Inc.*, 835 F. Supp. 732, 735 (S.D.N.Y. 1993); *Cattle Finance Co. v. Boedery, Inc.*, 795 F. Supp. 362 (D. Kan. 1992).

Plaintiff. Plaintiff will suffer irreparable injury without the issuance of a preliminary injunction.

3. The balance of hardships.

The Sereboff Defendants received personal injury settlement funds because of their injuries. See Verified Complaint, ¶ 14. Additionally, the Sereboffs have willingly accepted $74, 869.37 from the Plan to pay for their medical expenses, while expressly agreeing to reimburse the Plan for those expenses. *Id.* at ¶¶ 11,12. The Sereboffs will not be harmed because granting the request for relief will merely maintain the status quo until a final determination can be made on this matter. Conversely, if this request is not granted, the Sereboffs will be able to deplete funds owed to Plaintiff. Thus, injunctive relief is necessary and appropriate.

4. The public interest is advanced by issuing a preliminary injunction.

This factor also supports Plaintitff's request for relief because without the assurance that Plaintiff can recover benefits paid to Plan participants and beneficiaries where those parties recover from third parties, the stability of many plans would be substantially compromised and could cause some companies to discontinue or greatly scale back the scope of the benefits provided. *See Cutting v. Jerome Foods, Inc.*, 993 F .2d 1293 (7th Cir. 1993). Accordingly, this Court should grant Plaintiffs request for relief.

CONCLUSION

Based on the foregoing, this Court should grant Plaintift's motion for a temporary restraining order and after notice and a hearing on this matter, this Court should issue a preliminary injunction enjoining Defendants, and all those in active concert or participation with them, including their attorneys, from disbursing or otherwise dissipating the disputed funds.

Date: August 5,2003.

Respectfully submitted,

By: /S/_____

[Local Counsel] Michelle Stawinski (Bar No. 15126)
Bouland & Brush, LLC
201 N. Charles Street, suite 2400
Baltimore, Maryland 21201-4108
Telephone: (410) 752-6000
Facsimile: (410) 625-3859

[Lead Counsel] Holly J. Schimmel *
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4439
Facsimile: (901) 844-4435

* Application for *Pro Hac Vice* to be filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC.,	
Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP,	03CV2269 Case No.
Defendants	

TEMPORARY RESTRAINING ORDER

Based upon Plaintiffs motion and memorandum, Plaintiffs Verified Complaint, and the record as a whole, the Court finds that Plaintiff will suffer immediate and irreparable injury if this motion is not granted and, thus, Plaintiffs motion for a temporary restraining order is well-taken and should be granted.

The Court makes the following factual findings:

1. Defendants Marlene and Joel Sereboff (the "Serebotl's") are "Covered Persons" under the MAMSI Life and Health Insurance PPO Plan (the "Plan"), which is

sponsored by Katzen Eye Group (Verified Complaint, ¶¶ 2, 9).

2. On June 22, 2000, the Sereboffs were injured in an accident. (Verified Complaint, ¶ 10).

3. In connection with the injuries from this accident, the Plan paid medical benefits on behalf of the Sereboffs in the amount of $74,869.37. (Verified Complaint, ¶¶ 15,16).

4. The Plan contains an acts of third parties provision, which states:

> ACTS OF THIRD PARTIES
>
> This subrogation provision applies when you are sick or injured as a result of the act or omission of another person or party. Subrogation means the Company's right to recover any payments made to you or your dependent by a third party or any insurer acting in place of, or on behalf of a third party or a third party's insurer, because of an injury or illness caused by a third party. Third party means another person or organization.
>
> If you or your dependent receives benefits and have a right to recover damages from a third party, the Company is subrogated to this right. All recoveries from a third party (whether by lawsuit, settlement, or otherwise) must be used to reimburse the Company net of reasonable attorney fees and court costs prorated to reflect that portion of the total recovery which is due the Company for benefits paid. Any remainder will be yours or your dependents. The Company's share of the recovery will not be reduced because you or your dependent has not received the full damages claimed, unless the Company agrees in writing to a reduction.

> You must promptly advise the Company whenever a claim is made against a third party with respect to any loss for which the Company benefits have been or will be paid. You or your dependent must execute any assignments, liens or other documents and provide information as the Company requests. MLH's benefits may be withheld until documents or information are received. If you need more information about subrogation, the Company will provide you with its subrogation procedures.

(Verified Complaint, ¶ 13).

5. The Sereboffs have settled their claims in a personal injury action for an amount in the excess of the Plan's claim. (Verified Complaint, ¶ 14).

6. Defendants have refused to reimburse the Plan in accordance with the Plan terms. (Verified Complaint, ¶¶ 15 - 17).

The Court makes the following conclusions of law:

1. This Court has subject matter jurisdiction over this action and *in personam* jurisdiction over Defendants. Venue is proper in this Court.

2. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132(a)(3).

3. The terms of the Plan provide for reimbursement, to the extent of benefits paid, from covered persons for sums paid by the Plan to the participants and/or their beneficiaries which the participant or beneficiary is able to recover from third parties.

4. Because a *res* exists over which this Court can impose final equitable relief, ERISA preempts state law, and the Plan provides for 100% reimbursement from Plan participants and their beneficiaries as set forth above, Plaintiff has demonstrated a strong likelihood of success on the merits. *See Administrative Committee of the Wal-Mart Stores, Inc. Associates Health and Welfare Plan v. Varco*, No. 01 C 8277, 2002 U.S. Dist. LEXIS 530 (N.D. Ill. Jan.14, 2002) ("[w]here Wal-Mart filed an original action to impose a constructive trust to avoid dissipation before its right to share in the fund could be adjudicated, a *res* exists over which this court has assumed jurisdiction. This is request for equitable relief and therefore this court has exclusive jurisdiction under 29 U.S.C. § 1132(e)(I)"); *In Re Carpenter*, No. 00"2348, 2002 U.S. App. LEXIS 10615 (4th Cir. June 3, 2002) (allowing equitable relief under *Knudson* where a defendant had control of identifiable funds); *Great-West Life & Annuity Ins. Co. v. Brown*, 192 F. Supp. 2d 1376 (M.D. Ga. 2002) (federal court distinguished *Knudson* and found that disputed funds were identifiable and traceable when covered person's attorney was holding funds).

5. The actions of Defendants, and all those in active concert or participation with them, unless restrained and enjoined until the hearing on Plaintiff's motion for preliminary injunction, will likely cause Plaintiff to suffer immediate and irreparable injury because Defendants have the ability, unless restrained, to dissipate these funds and place the funds beyond the reach of the Court and Plaintiff, thereby preventing the Court from imposing final equitable relief in this matter.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that:

1) Defendants, and all those acting in concert or participation with them, are restrained from

disposing anyof the $74,869.37 recovered from a settlement proceeds until Plaintiffs motion for Preliminary Injunction is decided.

2) A hearing on Plaintiffs motion for preliminary injunction is set for August ___, 2003, at _____.

3) Plaintiff shall post a bond with the Clerk in the amount of $1,000 within three days from the date of this order.

END OF ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC., Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP, Defendants	Case No.1:03-cv-02269-AMD

ORDER GRANTING STIPULATION TO PRESERVE FUNDS, WITHDRAW MOTION FOR A PRELIMINARY INJUNCTION, AND BRIEFING SCHEDULE

Pursuant to the agreement of the parties as acknowledged by their signatures below, the Court orders:

1. Defendants Joel Sereboff and Marlene Sereboff shall preserve $74,869.37 of the settlement funds recovered because of injuries sustained on or about June 22, 2000, which are currently held in investment accounts, (and must keep the settlement funds in those investment accounts) until the Court rules on the merits of this case and all appeals, if any, are exhausted;
2. Plaintiff's Motion for Preliminary Injunction is withdrawn as moot;
3. By September 5, 2003, Defendants may move to dismiss pursuant to Fed. R. Civ. P.12(b)(6);

4. By September 19,2003, Plaintiff may respond to Defendants' filings.
5. By September 26,2003, Defendants may reply to Plaintiffs response.

SO ORDERED, On August ___,2003.

_____
J. Frederick Motz
United States District Judge

APPROVED AS TO FORM:

By:___/S/_____
Holly J. Schimmel
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4439
Facsimile: (901) 888-4435
ATTORNEY FOR PLAINTIFF

By : ____/S/ _____
THE BOCCARDO LAW FIRM LLP
111 West St. John Street
Eleventh Floor
P.O. Box 15001
San Jose, California 95115-0001
Telephone: (408) 298-5678
Facsimile: (408) 298-7503
ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC.,	
Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP,	03CV2269 Case No.
Defendants	

TEMPORARY RESTRAINING ORDER

Based upon Plaintiffs motion and memorandum, Plaintiffs Verified Complaint, and the record as a whole, the Court finds that Plaintiff will suffer immediate and irreparable injury if this motion is not granted and, thus, Plaintiffs motion for a temporary restraining order is well-taken and should be granted.

The Court makes the following factual findings:

1. Defendants Marlene and Joel Sereboff (the "Serebotl's") are "Covered Persons" under the MAMSI Life and Health Insurance PPO Plan (the "Plan"), which is

sponsored by Katzen Eye Group (Verified Complaint, ¶¶ 2, 9).

2. On June 22, 2000, the Sereboffs were injured in an accident. (Verified Complaint, ¶ 10).

3. In connection with the injuries from this accident, the Plan paid medical benefits on behalf of the Sereboffs in the amount of $74,869.37. (Verified Complaint, ¶¶ 15,16).

4. The Plan contains an acts of third parties provision, which states:

> ACTS OF THIRD PARTIES
>
> This subrogation provision applies when you are sick or injured as a result of the act or omission of another person or party. Subrogation means the Company's right to recover any payments made to you or your dependent by a third party or any insurer acting in place of, or on behalf of a third party or a third party's insurer, because of an injury or illness caused by a third party. Third party means another person or organization.
>
> If you or your dependent receives benefits and have a right to recover damages from a third party, the Company is subrogated to this right. All recoveries from a third party (whether by lawsuit, settlement, or otherwise) must be used to reimburse the Company net of reasonable attorney fees and court costs prorated to reflect that portion of the total recovery which is due the Company for benefits paid. Any remainder will be yours or your dependents. The Company's share of the recovery will not be reduced because you or your dependent has not received the full damages claimed, unless the Company agrees in writing to a reduction.

> You must promptly advise the Company whenever a claim is made against a third party with respect to any loss for which the Company benefits have been or will be paid. You or your dependent must execute any assignments, liens or other documents and provide information as the Company requests. MLH's benefits may be withheld until documents or information are received. If you need more information about subrogation, the Company will provide you with its subrogation procedures.

(Verified Complaint, ¶ 13).

5. The Sereboffs have settled their claims in a personal injury action for an amount in the excess of the Plan's claim. (Verified Complaint, ¶ 14).

6. Defendants have refused to reimburse the Plan in accordance with the Plan terms. (Verified Complaint, ¶¶ 15 - 17).

The Court makes the following conclusions of law:

1. This Court has subject matter jurisdiction over this action and *in personam* jurisdiction over Defendants. Venue is proper in this Court.

2. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132(a)(3).

3. The terms of the Plan provide for reimbursement, to the extent of benefits paid, from covered persons for sums paid by the Plan to the participants and/or their beneficiaries which the participant or beneficiary is able to recover from third parties.

4. Because a *res* exists over which this Court can impose final equitable relief, ERISA preempts state law, and the Plan provides for 100% reimbursement from Plan participants and their beneficiaries as set forth above, Plaintiff has demonstrated a strong likelihood of success on the merits. *See Administrative Committee of the Wal-Mart Stores, Inc. Associates Health and Welfare Plan v. Varco*, No. 01 C 8277, 2002 U.S. Dist. LEXIS 530 (N.D. Ill. Jan.14, 2002) ("[w]here Wal-Mart filed an original action to impose a constructive trust to avoid dissipation before its right to share in the fund could be adjudicated, a *res* exists over which this court has assumed jurisdiction. This is request for equitable relief and therefore this court has exclusive jurisdiction under 29 U.S.C. § 1132(e)(I)"); *In Re Carpenter*, No. 00"2348, 2002 U.S. App. LEXIS 10615 (4th Cir. June 3, 2002) (allowing equitable relief under *Knudson* where a defendant had control of identifiable funds); *Great-West Life & Annuity Ins. Co. v. Brown*, 192 F. Supp. 2d 1376 (M.D. Ga. 2002) (federal court distinguished *Knudson* and found that disputed funds were identifiable and traceable when covered person's attorney was holding funds).

5. The actions of Defendants, and all those in active concert or participation with them, unless restrained and enjoined until the hearing on Plaintiff's motion for preliminary injunction, will likely cause Plaintiff to suffer immediate and irreparable injury because Defendants have the ability, unless restrained, to dissipate these funds and place the funds beyond the reach of the Court and Plaintiff, thereby preventing the Court from imposing final equitable relief in this matter.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that:

1) Defendants, and all those acting in concert or participation with them, are restrained from disposing anyof the $74,869.37 recovered from a settlement proceeds until Plaintiffs motion for Preliminary Injunction is decided.

2) A hearing on Plaintiffs motion for preliminary injunction is set for August 12, 2003, at 3:00 p.m.

3) Plaintiff shall post a bond with the Clerk in the amount of $1,000 within three days from the date of this order.

END OF ORDER

/S/ of Judge Motz
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC., Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP, Defendants	Case No.1:03-cv-02269-AMD

ORDER GRANTING STIPULATION TO PRESERVE FUNDS, WITHDRAW MOTION FOR A PRELIMINARY INJUNCTION, AND BRIEFING SCHEDULE

Pursuant to the agreement of the parties as acknowledged by their signatures below, the Court orders:

Defendants Joel Sereboff and Marlene Sereboff shall preserve $74,869.37 of the settlement funds recovered because of injuries sustained on or about June 22, 2000, which are currently held in investment accounts, (and must keep the settlement funds in those investment accounts) until the Court rules on the merits of this case and all appeals, if any, are exhausted;

2. Plaintiff's Motion for Preliminary Injunction is withdrawn as moot;
3. By September 5, 2003, Defendants may move to dismiss pursuant to Fed. R. Civ. P.12(b)(6);

4. By September 19,2003, Plaintiff may respond to Defendants' filings.
5. By September 26,2003, Defendants may reply to Plaintiffs response.

SO ORDERED, On August 11 ,2003.

_____/S/_____
J. Frederick Motz
United States District Judge

APPROVED AS TO FORM:

By:___/S/_____
Holly J. Schimmel
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4439
Facsimile: (901) 888-4435
ATTORNEY FOR PLAINTIFF

By : ____/S/_____
THE BOCCARDO LAW FIRM LLP
111 West St. John Street
Eleventh Floor
P.O. Box 15001
San Jose, California 95115-0001
Telephone: (408) 298-5678
Facsimile: (408) 298-7503
ATTORNEY FOR DEFENDANTS

Exhibit 1

MAMSI [image omitted]
LIFE AND HEALTH
INSURANCE COMPANY

4 Taft Court
Rockville, MD 20850

46 02 06 473 11/00

MAMSI
LIFE AND HEALTH INSURANCE COMPANY
PPO
[image omitted]
Group Certificate
Schedule 7J

Rockville, Maryland

The following rules apply to enrollees and their family members who are entitled to benefits from both the Company and Medicare:

The Company is primary if:

(1) You are age 65 or over, have Medicare Part A (or Parts A and B) and employed by the Federal Government;

(2) Your covered spouse is age 65 or over and has Medicare Part A (or Parts A and B) and either you or your spouse id employed;

(3) The patient (you or a covered family member) is within the first thirty (30) months of eligibility to receive Medicare Part A benefits due to End Stage Renal Disease (ESRD), except when Medicare was the

patient's primary payer on the day before he or she became eligible for Medicare Part A due to ESRD; or

(4) The Patient (you or a covered family member) is under age 65 and eligible for Medicare solely on the basis of disability, and you are employed.

Medicare is primary if:

(1) You are an annuitant age of 65 or over, covered by Medicare Part A (or Parts A and B) and are not actively employed;

(2) Your covered spouse is age 65 or over ad has Medicare Part A (or Parts A or B) and neither you nor your spouse is actively employed;

(3) You are an annuitant not actively employed and either you or a covered family member (who may or may not be employed by employer who does not meet the "100 or More Employees Threshold" and covers you on his/her policy) is under age 65 and eligible for Medicare on the basis of disability;

(4) You are enrolled in Part B only, regardless of your employment status;

(5) The patient (you or a covered family member) has completed the thirty (30) month ESRD coordination period and is still eligible for Medicare due to ESRD; or

(6) The patient (you or a covered family member) becomes eligible for Medicare due to ESRD after Medicare assumed primary payer status for the patient under rule 1).

Medicare's payment and the Company

If you are covered by Medicare Part B and it is primary, you should be aware that your out-of-pocket costs for services covered by both the Company and Medicare Part B will depend on whether your doctor accepts Medicare assignment for claim. Medicare-participating doctors

accept assignment; that is, they have agreed not to bill you for more than the Medicare-approved amount for covered services. Some non-Medicare-participating doctors accept assignment on certain claims. If you use a doctor who accepts Medicare assignment for the claim, the doctor is permitted to bill you after the Company has paid only in those instances where the Medicare and the Company payments combined do not total the Medicare-approved amount.

Non-Medicare-participating doctors do not need to accept assignment. When they do not accept assignment on a claim they can not bill you for more than the Medicare-approved amount – up to a limit set by the Medicare law (the Social Security Act, 4 U.S.C.) called the limiting charge. The limiting charge is 115 percent of the Medicare approved amount. If you use a doctor who does not accept assignment for the claim, the doctor is permitted to bill you after the Company has paid only if the Medicare and the Company payments combined do not total the limiting charge set by Medicare law for non-Medicare-participating doctors. Neither you nor the Company is liable for any amount in excess of the Medicare limiting charge for the charges of a non-participating Medicare doctor. The Medicare Explanation of benefits (EOB) form will have more information about this limit.

In most cases, when services are covered by both Medicare and the Company, Medicare is the primary payer if you are an annuitant and the Company is the primary if you are an employee. When Medicare is the primary payer, your claims should first be submitted to Medicare.

After Medicare has paid its benefits, the Carrier will consider the balance of any covered expenses. To be sure

your claims are processed by this Carrier you must submit the EOB form from Medicare and duplicates of all bills along with a completed claim form. The carrier will not process your claim without knowing whether you have Medicare and, if you do, without receiving the Medicare EOB.

Worker's Compensation

The Company will not pay for benefits or services required as the result of occupational disease or injury that medical benefits are payable under worker's compensation or by a similar agency under another Federal or State law. This provision also applies when a third party injury settlement or other similar proceeding provides medical benefits in regard to a claim (or potential claim) under worker's compensation or similar laws. If medical benefits provided under such laws are exhausted, medical benefits may be provided for services or supplies covered by the Company. The Company is entitled to be reimbursed for benefits paid by the Company that were later found to be payable under worker's compensation or by a similar agency under Federal or State law.

The Company may release, claim or obtain any necessary information from any insurance company or other organization to carry out this provision. In addition, any Member claiming benefits from MLH shall furnish MLH with information, as requested, necessary to administer this provision. If the member refuses to cooperate withMLH to implement this provision, the Member must pay to MLH the Usual, Customary and Reasonable Fee for the services rendered.

ACTS OF THIRD PARTIES

This subrogation provision applies when you are sick or injured as a result to the act or omission of another person

or party. Subrogation means the Company's right to recover any payments made to you or your dependent by a third party or any insurer acting in place of, or on behalf of a third arty or a third party's insurer, because of an injury or ill ness caused by a third party. Third party means another person or organization.

If you or your dependent receives benefits and have a right to recover damages from a third party, the Company is subrogated to this right. All recoveries from a third party (whether by lawsuit, settlement, or otherwise) must be used to reimburse the Company net of reasonable attorney fees and court costs prorated to reflect that portion of the total recovery which is due the Company for benefits paid. Any remainder will be yours or your dependents. The Company's share of the recovery will not be reduced because you or your dependent has not received the full damages claimed, unless the Company agrees in writing to a reduction.

You must promptly advise the Company whenever a claim is made against a third party with respect to any loss for which the Company benefits have been or will be paid. You or your dependent must execute any assignments, liens or other documents and provide information as the Company requests. MLH's benefits may be withheld until documents or information are received. If you need more information about subrogation, the Company will provide you with its subrogation procedures.

SCHEDULE OF INSURANCE
SCHEDULE 7J

To receive medial care covered under this group Policy, You may select a medical provider of Your choice. There are two classes of providers under this Group Policy,

Preferred providers and non-Preferred providers. The providers listed in your Directory are Preferred Providers. You will be responsible for any applicable Deductible, Copayment and Co-insurance. The Preferred Providers have agreed to accept the Company's payment plus your Deductible, Copayment, or Coinsurance as full payment for the claim. If You choose a non-Preferred Provider, the Company is responsible for paying the lesser of the applicable percentage of the requested Charge or the Usual Customary and Reasonable Charge authorized by the Company. You will be responsible for any applicable Deductible and Copayment plus the balance, if any, of the non-Preferred Provider's charge. Generally, Your Out-of-Pocket expense will be lower if You use a Preferred Provider rather than a non-Preferred Provider.

Note: If you use a preferred facility, keep in mind that the professionals who provide services to you in the facility such as radiologists, anesthesiologists, pathologists and neonatologists may not be Preferred Providers. If they are not, they will be paid as Non-Preferred Providers.

Benefits will be paid at the Preferred Provider level when care is received from a non-Preferred Provider for any of the following reasons:

a. a Preferred Provider is not reasonably available, as determined by the Company;
b. the Member is referred to a non-Preferred Provider by a Preferred Provider.
c. the Member requires care from a type of provider which is not enrolled in the Company;
d. Emergency care; or;
e. Out-of area care for unexpected illness or injury.

MAMSI Life and Health Insurance Company(herein called the Company) provides benefits, as shown below in the Health Services, Limits, and Percentages Payable section, for a member when he or she received treatment or service as outlines above.

ANNUAL DEDUCTIBLES:

For non-Preferred Providers:

$300 per Member but not more than

$600 per family each Contract Year.

The Annual Deductible does not apply to child wellness and mammography services.

MAXIMUM OUT-OF-POCKET EXPENSE:

For Preferred and non-Preferred Providers:

$1,300 per Member but not more than

$2,600 per family each Contract Year.

Exhibit 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): JOHN C. STEIN, ESQ. THE BOCCARDO LAW FIRM 111 West St. John Street, Suite 1100 P.O. Box 15001 San Jose, CA 95115-0001 ATTORNEY FOR (NAME): Joel and Marlene Sereboff TELEPHONE: (408) 298-5678	FOR COURT USE ONLY (ENDORSED) 2000 AUG 11 P.M. 1:18 A. NELSON
Insert name of court, judicial district or	

branch court, if any, and post office and street address: SANTA CLARA COUNTY SUPERIOR COURT 191 North First Street 191 North First Street San Jose, CA 95113	
PLAINTIFF: JOEL SEREBOFF AND MARLENE SEREBOFF	
DEFENDANT: LANCASTER COLONY CORPORATION, a corporation, BUDGET RENT-A-CAR CORPORATION, a corporation, TEAM FLEET FINANCING COPORATION, a corporation, CHARLES E. ROEDERER, and X Does 1 to 50	
COMPLAINT – Personal Injury, Property Damage, Wrongful Death X Motor Vehicle ☐ Property Damage X Personal Injury X OTHER *(specify)*: General Negligence Motor Vehicle ☐ Wrongful Death ☐ Other Damages: *(specify)*	Case number: CV791810

1. This pleading, including attachments and exhibits, consists of the following number of pages: 5

2. a. Each plaintiff named above is a competent adult
   ☐ Except plaintiff *(name)*:

☐ a corporation qualified to do business in California;

☐ an unincorporated entity *(describe)*:

☐ a public entity *(describe)*:

☐ a minor ☐ an adult

☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

☐ other *(specify)*:

☐ other *(specify)*:

☐ Except plaintiff *(name)*:

☐ a corporation qualified to do business in California;

☐ an unincorporated entity *(describe)*:

☐ a public entity *(describe)*:

☐ a minor ☐ an adult

☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

☐ other *(specify)*:

other *(specify)*:

b. ☐ Plaintiff *(name)*:

is doing business under the fictitious name of *(specify)*:

and has complied with the fictitious business name laws.

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Complaint – Attachment 2c.

(Continued)

SHORT TITLE: SEREBOFF, et al. v. LANCASTER COLONY CORPORATION, et al.	CASE NUMBER

COMPLAINT – Personal Injury, Property Damage, Wrongful Death

3. a. Each defendant named above is a natural person

X Except defendant *(name):* Lancaster Colony

☐ a business organization, form unknown

X a corporation

☐ an unincorporated entity *(describe):*

☐ a public entity *(describe):*

☐ other *(specify):*

X Except defendant *(name):* Budget Rent A Car Corporation

☐ a business organization, form unknown

X a corporation

☐ an unincorporated entity *(describe):*

☐ a public entity *(describe):*

☐ other *(specify):*

☐ Except defendant *(name)* Team Fleet Financing Corporation

☐ a business organization, form unknown

X a corporation

☐ an unincorporated entity *(describe):*

☐ a public entity *(describe):*

☐ other *(specify):*

☐ Except defendant *(name):*

☐ a business organization, form unknown

☐ a corporation

☐ an unincorporated entity (*describe):*

☐ a public entity *(describe):*

☐ other *(specify):*

b. The true names and capacities of defendants sued as Does are unknown to plaintiff.

c. ☐ Information about additional defendants who are not natural persons is contained in Complaint – Attachment 3c.

d. ☐ Defendants who are joined pursuant to Code of Civil Procedure section 382 are *(names):*

4. ☐ Plaintiff is required to comply with a claims statute, and

a. ☐ plaintiff has complied with applicable claims statutes, or

b. ☐ plaintiff is excused from complying because *(specify):*

5. This court is the proper court because

☐ at least one defendant now resides in its jurisdictional area.

☐ the principal place of business of a corporation or unincorporated association in its jurisdictional area

X injury to person or damage to personal property occurred in its jurisdictional area.

☐ other *(specify):*

6. ☐ The following paragraphs of this complaint are alleged on information and belief *(specify paragraph numbers):*

(Continued)

SHORT TITLE: SEREBOFF, et al. v. LANCASTER COLONY CORPORATION, et al.	CASE NUMBER:

COMPLAINT – Personal Injury, Property Damage, Wrongful Death (Continued)

7. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
   ☐ listed in Complaint – Attachment 7 ☐ as follows:

8. Plaintiff has suffered
   X wage loss
   ☐ loss of use of property
   X hospital and medical expenses
   X general damages
   ☐ property damage
   X loss of earning capacity
   X other damage *(specify):* Prejudgment interest as allowed by law

9. Relief sought in this complaint is within the jurisdiction of his court.

10. PLAINTIFF PRAYS
    For judgment for costs of suit; for such relief as is fair, just, and equitable; and for
    X compensatory damages

X (Superior Court) according to proof.

☐ (Municipal and Justice Court) in the amount of $_____

☐ other *(specify):*

11. The following causes of action are attached and the statements above apply to each: *(Each complaint must have one or more causes of action attached.)*

X Motor Vehicle

X General Negligence

☐ Intentional Tort

☐ Products Liability

☐ Premises Liability

☐ Other *(specify):*

THE BOCCARDO LAW FIRM LLP
JOHN C. STEIN _____/s/_____
(Signature of plaintiff or attorney)

SHORT TITLE: SEREBOFF, et al. v. LANCASTER COLONY CORPORATION, et al.	CASE NUMBER:

FIRST CAUSE OF ACTION – Motor Vehicle

ATTACHMENT TO X Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff *(name)*: JOEL SEREBOFF and MARLENE SEREBOFF

MV-1: Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred on *(date):* 6/22/00 at *(place):* or near San Jose Airport on the

Green Lot Entry Road, in the city of San Jose, County of Santa Clara, State of California.

MV-2. DEFENDANTS

a. X The defendants who operated the motor vehicle are *(names)*: CHARLES E. ROEDERER, and

X Does 1 to 50

b. X The defendants who employed the persons who operated a motor vehicle in the course of their employment are *(names)*: LANCASTER COLONY CORPORATION

X Does 1 to 50

c. X The defendants who owned the motor vehicle which was operated with their permission are *(names)*: BUDGET RENT-A-CAR CORPORATION, TEAM FLEET FINANCING CORPORATION, and

X Does 1 to 50

d. X The defendants who entrusted the motor vehicle are *(names)*: ALL NAMED DEFENDANTS and

X Does 1 to 50

e. X The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were *(names)*: CHARLES E. ROEDERER, and

X Does 1 to 50

f. X The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are

☐ listed in Attachment MV-3f X as follows:

unknown at this time

X Does 1 to 50

SHORT TITLE: SEREBOFF, et al. v. LANCASTER COLONY CORPORATION, et al.	CASE NUMBER:

SECOND CAUSE OF ACTION – General Negligence

ATTACHMENT TO X Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN – 1. Plaintiff *(name)*: JOEL SEREBOFF and MARLENE SEREBOFF alleges that defendant *(name)*: LANCASTER COLONY CORPORATION, BUDGET RENT A CAR, TEAM FLEET FINANCING, CHARLES E. ROEDERER, and

X Does 1 to 50

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff on *(date)*: 6/22/00 at *(place)*: on or about San Jose Airport, on the Green Lot Entry Road, in the City of San Jose, County of Santa Clara, State of California

(description of reasons for liability):

(a) Plaintiff refers to and incorporates herein by this reference all of the allegations of the First Cause of Action (Motor Vehicle) as if set forth in full hereinbelow.

(b) At said time and place alleged hereinabove, Defendants LANCASTER COLONY CORPORATION, BUDGET RENT A CAR, TEAM FLEET FINANCING, CHARLES E. ROEDERER, and DOES 1 to 50, inclusive, and each of them, owed a duty to Plaintiffs to act reasonably regarding their ownership, entrustment, operation, maintenance and

control of their motor vehicle involved in the collision which occurred at said time and place hereinabove alleged and to own, entrust, operate, maintain and control said vehicle in a safe and legal manner. Said defendants breached their duty of care in that while operating the vehicle owned by Defendant BUDGET RENT A CAR and TEAM FLEET FINANCING, Defendants CHARLES E. ROEDERER made an unsafe left turn into the path of Plaintiffs' oncoming vehicle, causing said vehicle to forcibly collide with Defendants' vehicle, knocking Plaintiffs' vehicle had on into a concrete barrier wall. As a result of the negligence, carelessness and recklessness of Defendants, and each of them, Plaintiffs sustained severe personal injuries and damages.

(c) As a direct and proximate result of the negligence and carelessness of Defendants, and each of them, as herein alleged, Plaintiffs sustained serious injuries in the collision, resulting in damages to Plaintiffs as hereinabove alleged.

Exhibit 3

[image omitted]

October 18, 2000

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

RE: Marlene D. Sereboff
M219446706*01
DOI: June 22, 2000

Dear Counsel:

MAMSI Life and Health Insurance Co. has been advised that you have been retained to represent the referenced member in connection with claims for personal injuries which arose through the negligence of a third party.

As stated in the member's healthcare policy, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the third party insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of the claims paid by MAMSI Life and Health Insurance Co..

This letter is to give written notice of MAMSI Life and Health Insurance Co.'s subrogation lien for medical bills processed on behalf of our member. The current amount of our lien is identified on the attached Summary of Paid Claims. This amount will be updated as additional claims are processed.

MAMSI Life and Health Insurance Co. would like to offer you the opportunity to assert our lien and will agree to a contingency fee arrangement as long as it does not exceed one fourth of the amount recovered for MAMSI Life and Health Insurance Co..

If you are willing to proceed under the terms of this agreement, please sign the enclosed agreement and return it in the pre-addressed envelope by November 1, 2000. Your immediate attention is requested, otherwise we will be compelled to retain counsel to pursue recovery of our lien and will not be responsible for any portion of the member's attorney fees.

Sincerely,

/s/ of Jerry Bandler

Karen Perkins
Sr. Subrogation Coordinator
(301) 360-8768

Encl. cc: Marlene D. Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[image omitted]

October 18, 2000

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

RE: Joel Sereboff
M219446706*02
DOI: June 22, 2000

Dear Counsel:

MAMSI Life and Health Insurance Co. has been advised that you have been retained to represent the referenced member in connection with claims for personal injuries which arose through the negligence of a third party.

As stated in the member's healthcare policy, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the third party insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of the claims paid by MAMSI Life and Health Insurance Co..

This letter is to give written notice of MAMSI Life and Health Insurance Co.'s subrogation lien for medical bills processed on behalf of our member. The current amount of our lien is identified on the attached Summary of Paid Claims. This amount will be updated as additional claims are processed.

MAMSI Life and Health Insurance Co. would like to offer you the opportunity to assert our lien and will agree to a contingency fee arrangement as long as it does not exceed

one fourth of the amount recovered for MAMSI Life and Health Insurance Co..

If you are willing to proceed under the terms of this agreement, please sign the enclosed agreement and return it in the pre-addressed envelope by November 1, 2000. Your immediate attention is requested, otherwise we will be compelled to retain counsel to pursue recovery of our lien and will not be responsible for any portion of the member's attorney fees.

Sincerely,

/s/ of Jerry Bandler

Karen Perkins
Sr. Subrogation Coordinator
(301) 360-8768

Encl. cc: Joel Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 4

[image omitted]

October 18, 2000

Marlene D. Sereboff
2215 MILLRIDGE RD
OWINGS MILLS, MD 21117

RE: Marlene D. Sereboff
M219446706*01

Dear Ms. Sereboff:

Our office has been informed that the above MAMSI Life and Health Insurance Co. member was involved in an accident on June 22, 2000. To date, we have processed a total of $67,670.65 in medical bills resulting from this accident. If additional medical bills received and/or approved after the date of this letter, the above stated amount is subject to increase.

As stated in your Evidence of Coverage, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the other parties insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of claims paid by MAMSI Life and Health Insurance Co.. Please sign the attached agreement regarding the above statements and return it to MAMSI Life and Health Insurance Co. in the enclosed pre-addressed envelope.

If you should have any questions, please contact me at (301) 360-8768. Thank you for your cooperation in this coordination of benefits matter and for your membership in MAMSI Life and Health Insurance Co. Health Plan.

Sincerely,

/s/ of Jerry Bandler

Karen Perkins
Sr. Subrogation Coordinator
MAMSI Life and Health Insurance Co.

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 5

[image omitted]

October 18, 2000

Marlene D. Sereboff
2215 MILLRIDGE RD
OWINGS MILLS, MD 21117

RE: Joel Sereboff
M219446706*02

Dear Ms. Sereboff:

Our office has been informed that the above MAMSI Life and Health Insurance Co. member was involved in an accident on June 22, 2000. To date, we have processed a total of $5,797.60 in medical bills resulting from this accident. If additional medical bills received and/or approved after the date of this letter, the above stated amount is subject to increase.

As stated in your Evidence of Coverage, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the other parties insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of claims paid by MAMSI Life and Health Insurance Co.. Please sign the attached agreement regarding the above statements and return it to MAMSI Life and Health Insurance Co. in the enclosed pre-addressed evelope.

If you should have any questions, please contact me at (301) 360-8768. Thank you for your cooperation in this coordination of benefits matter and for your membership in MAMSI Life and Health Insurance Co. Health Plan.

Sincerely,

/s/ of Jerry Bandler

Karen Perkins
Sr. Subrogation Coordinator
MAMSI Life and Health Insurance Co.

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 6

[image omitted]

December 6, 2000

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

RE: Marlene D. Sereboff
M219446706*01
DOI: June 22, 2000

Dear Counsel:

MAMSI Life and Health Insurance Co. has been advised that you have been retained to represent the referenced member in connection with claims for personal injuries which arose through the negligence of a third party.

As stated in the member's healthcare policy, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the third party insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of the claims paid by MAMSI Life and Health Insurance Co..

This letter is to give written notice of MAMSI Life and Health Insurance Co.'s subrogation lien for medical bills processed on behalf of our member. The current amount of our lien is identified on the attached Summary of Paid Claims. This amount will be updated as additional claims are processed.

MAMSI Life and Health Insurance Co. would like to offer you the opportunity to assert our lien and will agree to a contingency fee arrangement as long as it does not exceed one fourth of the amount recovered for MAMSI Life and Health Insurance Co..

If you are willing to proceed under the terms of this agreement, please sign the enclosed agreement and return it in the pre-addressed envelope by December 20, 2000. Your immediate attention is requested, otherwise we will be compelled to retain counsel to pursue recovery of our lien and will not be responsible for any portion of the member's attorney fees.

Sincerely,

/s/ of Jerry Bandler

Karen Perkins
Sr. Subrogation Coordinator
(301) 360-8768

Encl. cc: Marlene D. Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 7

[image omitted]

December 6, 2000

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

Re: Marlene D. Sereboff
Member Number: M219446706*01
Date of Accident: June 22, 2000

Dear Sir/Madam:

We have updated our subrogation lien on the referenced case to include additional claims processed since the original claim summary mailed to you on October 18, 2000.

The current subrogation lien amount is $70,180.46.

Please advise this office when there is a change in the status of this case which would affect our subrogation lien. I can be reached at (301) 360-8768.

Sincerely,

/s/

Karen Perkins
Sr. Subrogation Coordinator

Enclosure
cc: Marlene D. Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 8
[image omitted]

December 6, 2000

Marlene D. Sereboff
2215 Millridge Rd
OWINGS MILLS, MD 21117

RE: Marlene D. Sereboff
M219446706*01

Dear Ms. Sereboff:

Our office has been informed that the above MAMSI Life and Health Insurance Co. member was involved in an accident on June 22, 2000. To date, we have processed a total of $70,180.46 in medical bills resulting from this accident. If additional medical bills received and/or approved after the date of this letter, the above stated amount is subject to increase.

As stated in your Evidence of Coverage, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the other parties insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of claims paid by MAMSI Life and Health Insurance Co.. Please sign the attached agreement regarding the above statements and return it to MAMSI Life and Health Insurance Co. in the enclosed pre-addressed envelope.

If you should have any questions, please contact me at (301) 360-8768. Thank you for your cooperation in this coordination of benefits matter and for your membership in MAMSI Life and Health Insurance Co. Health Plan.

Sincerely,

/s/

Karen Perkins
Sr. Subrogation Coordinator
MAMSI Life and Health Insurance Co.

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 9

MESSAGE CONFIRMATION

12/06/00 10:40

ID=COB SIU/SUBRO/AVOID

DATE 12/06
S.R.-TIME 02'53
DISTANT STATION ID
4082987503

MODE
CALLING

PAGES 08

RESULT
OK 0000

12/06/00 10:36 COB SIU/SUBRO/AVOID
→914082987503 NO. 410 001

P.O. Box 935
Frederick, Maryland 21705
Phone: 301/360-8095
800/806-3242
Fax: 301/360/8970
301/360-8971
301/360-8973

Mid Atlantic Medical
Services, Inc.

Fax
To: Mr. John Stein From: Karen Perkins
@ 301-360-8768

Fax: 408-298-7503 Date: 12/6/00
Phone: Pages: 8 (including cover sheet)
Re: CC:
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply
☐ Please Recycle

Confidentiality Notice: The documents accompanying this telecopy transmission contain confidential information belonging to the sender that is legally privileged. This information is intended only at the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to

[next page]

P.O. Box 935
Frederick, Maryland 21705
Phone: 301/360-8095
800/806-3242
Fax: 301/360/8970
301/360-8971
301/360-8973

Mid Atlantic Medical Services, Inc.

Fax
To: Mr. John Stein From: Karen Perkins
@ 301-360-8768
Fax: 408-298-7503 Date: 12/6/00
Phone: Pages: 8 (including cover sheet)
Re: CC:
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply
☐ Please Recycle

Confidentiality Notice: The documents accompanying this telecopy transmission contain confidential information belonging to the sender that is legally privileged. This information is intended only at the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled.

If you hare not the intended recipient, you are hereby notified that any disclosure, copying, distribution or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this telecopy in error, please notify the sender immediately to arrange for return of these documents.

• Comments:

Lorraine,

Please have attorney sign and return lien to 301-360-8970. Also please complete the MUA Info. Form.

Karen

Exhibit 10

[image omitted]

April 13, 2001

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

Re: Marlene D. Sereboff
Member Number: M219446706*01
Date of Accident: June 22, 2000

Dear Sir/Madam:

We have updated our subrogation lien on the referenced case to include additional claims processed since the original claim summary mailed to you on October 18, 2000.

The current subrogation lien amount is $72,317.35.

Please advise this office when there is a change in the status of this case which would affect our subrogation lien. I can be reached at (877) 288-0266.

Sincerely,

/s/

Karen Perkins
Litigation Analyst ext. 3937

Enclosure

cc: Marlene D. Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 11

[image omitted]

April 13, 2001

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

Re: Marlene D. Sereboff, M219446706*01

Dear Counsel:

You shall please consider this letter a formal demand by MAMSI Life and Health Insurance Co., that your client Marlene D. Sereboff, cooperate with MAMSI Life and

Health Insurance Co. as required by her health benefit contract. Her failure to immediately cooperate will leave MAMSI Life and Health Insurance Co. with no choice but to seek alternate methods for protecting its rights.

We have received information which indicates that Marlene D. Sereboff was injured as a result of an automobile accident involving a third party on or about June 22, 2000; as a result of that accident, MAMSI Life and Health Insurance Co. has paid benefits on behalf of Marlene D. Sereboff. Further, we have reason to believe that Marlene D. Sereboff intends to recover or attempt to recover from the responsible third party for the injuries she incurred as a result of the accident. The Evidence of Coverage for Marlene D. Sereboff's health benefit plan with MAMSI Life and Health Insurance Co. states that if a member is injured or becomes ill through the act or omissions of a third party and the member ultimately recovers monies for physical injuries from the third party, then MAMSI Life and Health Insurance Co. shall be reimbursed by the member for the reasonable cash value of the benefits which MAMSI Life and Health Insurance Co. has provided. (See Evidence of Coverage as Attachment A).

As stated above, this letter is a formal demand that Marlene D. Sereboff agree to perform pursuant to the provisions of her Evidence of Coverage by endorsing the enclosed lien, Attachment B. If Marlene D. Sereboff fails to promptly sign and return the lien, then she leaves MAMSI Life and Health Insurance Co. with no choice but to conclude that she does not intend to honor the terms of her Evidence of Coverage. As a result, MAMSI Life and Health Insurance Co. shall seek an appropriate alternative means for protecting and asserting its rights.

Please give this matter your prompt attention.

Very truly yours,

Karen Perkins
Litigation Analyst ext. 3937
(877) 288-0266
April 13, 2001

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[next page]
[image omitted]

Marlene D. Sereboff
2215 Millridge Rd
OWINGS MILLS, MD 21117

Re: Marlene D. Sereboff, M219446706*01

Dear Marlene D. Sereboff:

You shall please consider this letter a formal demand by MAMSI Life and Health Insurance Co., that your client Marlene D. Sereboff, cooperate with MAMSI Life and Health Insurance Co. as required by her health benefit contract. Her failure to immediately cooperate will leave

MAMSI Life and Health Insurance Co. with no choice but to seek alternate methods for protecting its rights.

We have received information which indicates that Marlene D. Sereboff was injured as a result of an automobile accident involving a third party on or about June 22, 2000; as a result of that accident, MAMSI Life and Health Insurance Co. has paid benefits on behalf of Marlene D. Sereboff. Further, we have reason to believe that Marlene D. Sereboff intends to recover or attempt to recover from the responsible third party for the injuries she incurred as a result of the accident. The Evidence of Coverage for Marlene D. Sereboff's health benefit plan with MAMSI Life and Health Insurance Co. states that if a member is injured or becomes ill through the act or omissions of a third party and the member ultimately recovers monies for physical injuries from the third party, then MAMSI Life and Health Insurance Co. shall be reimbursed by the member for the reasonable cash value of the benefits which MAMSI Life and Health Insurance Co. has provided. (See Evidence of Coverage as Attachment A).

As stated above, this letter is a formal demand that Marlene D. Sereboff agree to perform pursuant to the provisions of her Evidence of Coverage by endorsing the enclosed lien, Attachment B. If Marlene D. Sereboff fails to promptly sign and return the lien, then she leaves MAMSI Life and Health Insurance Co. with no choice but to conclude that she does not intend to honor the terms of her Evidence of Coverage. As a result, MAMSI Life and Health Insurance Co. shall seek an appropriate alternative means for protecting and asserting its rights.

Please give this matter your prompt attention.

Very truly yours,

/s/

Karen Perkins
Litigation Analyst ext. 3937
(877) 288-0266

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 12

[image omitted]

April 24, 2001

Ms. Karen Perkins
Litigation Analyst
MAMSI
Post Office Box 935
Frederick, Maryland 21705

Re: Marlene D. Sereboff
M219446706*01

Dear Ms. Perkins:

This will acknowledge your letter date April 13, 2001, with reference to Marlene D. Sereboff.

It is my understanding that this coverage was provided through Mrs. Sereboff's employment, The Katzen Eye Group, and as such it was provided in accordance with the terms of the Federal Employers Retirement Income and Security Act (ERISA).

As you may or may not know, the Ninth Circuit has consistently held in four decisions over the last five years that HMO's and other insurance carriers are not permitted to recover subrogation liens within the Ninth Circuit which encompasses California where this accident occurred and where the litigation is pending.

For your information, the cases that cover this issue are Cement Masons Health and Welfare trust Fund for Northern California, et al. v. Raymond Stone, 1999 Daily Journal (9th Cir. 1999) DAR 12453, No. 98-16150, FMC Medical Plan vs. Owens, (9th Cir. 1997) 122 F.3d 1258, Pacificare v. Martin (9th Cir. 1993) 34 F.3d 834, and Reynolds Metals Co. v. Cole, (9th Cir. 2000) 202 F.3d 1246. Therefore, MAMSI may wish to take whatever steps it feels are appropriate to protect its interest. However, in light of the law in California, and in particular the Ninth Circuit, I do not believe that MAMSI is entitled to any reimbursement upon its claims in accordance with the laws in the Ninth Circuit.

I would be happy to discuss this with you after you have had an opportunity review the Points and Authorities which I have supplied to you.

Yours very truly,

THE BOCCARDO LAW FIRM LLP

By /s/
JOHN C. STEIN

JCS:lo
cc: Mrs. Marlene Sereboff

Exhibit 13
[image omitted]

SECOND
May 7 2001
REQUEST

May 7, 2001

JOHN STEIN
ATTORNEY AT LAW
111 WEST ST. JOHN ST.
SAN JOSE, CA 95115

RE: Joel Sereboff
M219446706*02
DOI: June 22, 2000

Dear Counsel:

MAMSI Life and Health Insurance Co. has been advised that you have been retained to represent the referenced member in connection with claims for personal injuries which arose through the negligence of a third party.

As stated in the member's healthcare policy, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the third party insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of the claims paid by MAMSI Life and Health Insurance Co..

This letter is to give written notice of MAMSI Life and Health Insurance Co.'s subrogation lien for medical bills processed on behalf of our member. The current amount of our lien is identified on the attached Summary of Paid Claims. This amount will be updated as additional claims are processed.

MAMSI Life and Health Insurance Co. would like to offer you the opportunity to assert our lien and will agree to a contingency fee arrangement as long as it does not exceed one fourth of the amount recovered for MAMSI Life and Health Insurance Co..

If you are willing to proceed under the terms of this agreement, please sign the enclosed agreement and return it in the pre-addressed envelope by May 21, 2001. Your immediate attention is requested, otherwise we will be compelled to retain counsel to pursue recovery of our lien and will not be responsible for any portion of the member's attorney fees.

Sincerely,

/s/

Lisa Phelps

Subrogation Coordinator ext. 3933

(877) 288-0266

Encl. cc: Joel Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 14

[image omitted]

May 7, 2001

John Stein, Esquire
111 West St. John St.
San Jose, CA 95115

REGARDING: Joel Sereboff
MEMBER NUMBER: M219446706*02
DATE OF LOSS: June 22, 2000

Dear Mr. Stein:

Enclosed you will find an accident information form. Please complete the highlighted areas and return to MAMSI Life & Health Insurance Co. in the return envelope enclosed. Your time and attention to this matter are greatly appreciated. If you have any questions, please feel free to call me at (877) 288-0266 ext. 3933.

Thank you,

/s/

Lisa Phelps
Subrogation Coordinator
MAMSI Life & Health Insurance Co.

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 15

[image omitted]

May 7, 2001

Marlene D. Sereboff
2215 Millridge Rd
OWINGS MILLS, MD 21117

SECOND
MAY 7 2001
REQUEST

RE: Joel Sereboff
M219446706*02

Dear Ms. Sereboff:

Our office has been informed that the above MAMSI Life and Health Insurance Co. member was involved in an accident on June 22, 2000. To date, we have processed a total of $0.00 in medical bills resulting from this accident. If additional medical bills received and/or approved after the date of this letter, the above stated amount is subject to increase.

As stated in your Evidence of Coverage, if a member of MAMSI Life and Health Insurance Co. is injured or becomes ill through the act or neglect of another party and recovers money from the other parties insurance company and/or their own insurance, reimbursement must be made to MAMSI Life and Health Insurance Co. for the reasonable cash value of claims paid by MAMSI Life and Health Insurance Co.. Please sign the attached agreement regarding the above statements and return it to MAMSI Life and Health Insurance Co. in the enclosed pre-addressed evelope.

If you should have any questions, please contact me at (877) 288-0266. Thank you for your cooperation in this coordination of benefits matter and for your membership in MAMSI Life and Health Insurance Co. Health Plan.

Sincerely,

/s/

Lisa Phelps
Subrogation Coordinator ex. 3933
MAMSI Life and Health Insurance Co.

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[image omitted]

SECOND
MAY 7 2001
REQUEST

Please Return To:

Lisa Phelps
MID ATLANTIC MEDICAL SERVICES INC
Coordination of Benefits
4 Taft Court
Rockville, Maryland 20850

Re: Joel Sereboff
M219446706*02
DOI: June 22, 2000

AGREEMENT CONTRACT

I agree to represent Mid Atlantic Medical Services Inc., in its subrogation claim as stated in our agreement of May 7, 2001.

_____ _____

Attorney (Signature) Date

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 16

[image omitted]

May 23, 2001

John Stein, Esquire
THE BOCCARDO LAW FIRM LLP
111 West St. John St.
11th Floor
San Jose, CA 95115-0001

RE: Marlene Sereboff
Member Number: M219446706*01
Subrogation Lien: $72,317.35

Dear Mr. Stein:

I am in receipt of your letter dated April 24, 2001 concerning the above referenced subrogation lien.

First, I wish to bring to your attention that the Katzen Eye Group is not an ERISA Plan.

Secondly, Ms. Sereboff's health insurance is not an HMO. Ms. Sereboff is insured through MAMSI Life and Health, which is a PPO.

I am again sending you a copy of Ms. Sereboff's Evidence of Coverage booklet and ask that you read Pages 29 and 30 very carefully. It is clear from the contract of health

insurance that this is a Maryland contract and therefore California law does not apply.

According to the contract with Ms. Sereboff MAMSI Life and Health has every right to request a signed lien agreement and benefits may be withheld until the document is provided.

If I do not have a signed lien agreement on or before June 8, 2001, I will have no option but to follow the guidelines outlined in the Evidence of Coverage.

Sincerely,

/s/

Karen S. Perkins
Litigation Analyst
877-288-0266 Ext. 3937

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 17

[image omitted]

May 30, 2001

Ms. Karen Perkins
Litigation Analyst
MAMSI
Post Office Box 935
Frederick, Maryland 21705

Re: Marlene D. Sereboff
M219446706*01
Subrogation Lien: $72,317.35

Dear Ms. Perkins:

Thank you for your letter of May 23, 2001. I do not believe that some of the information contained in your letter is correct but you and I are not going to resolve this issue through exchange of correspondence.

If you believe that MAMSI is entitled to collect monies out of this litigation, I would suggest that you retain counsel in California to protect your interests since under California law I do not believe that I can represent MAMSI and my client at the same time.

At this point, the discussion is academic because no recovery has been had on this lawsuit at this time.

If you believe strongly that you are entitled to this reimbursement, then the lawyer who you retain would be able to protect your interests in litigation here in California and could negotiate separately with the defendants for reimbursement of all monies paid by you. I think that would be the reasonable solution under the circumstances.

If I can be of further assistance to you, please don't hesitate to call me.

Yours very truly,
THE BOCCARDO LAW FIRM
LLP
By /s/
JOHN C. STEIN

JCS:lo

Exhibit 18

[image omitted]

June 7, 2001

Ms. Karen Perkins
Litigation Analyst
MAMSI
Post Office Box 935
Frederick, Maryland 21705

Re: Marlene D. Sereboff
M219446706*01
Subrogation Lien: $72,317.35

Dear Ms. Perkins:

Following your verbal request of June 7, 2001, I am enclosing a copy of the Sereboff complaint.

Very truly yours,

THE BOCCARDO LAW FIRM
LLP
BY: /s/
JOHN C. STEIN

JCS/drs

Exhibit 19

[image omitted]

June 28, 2001

Ms. Lisa Phelps
Subrogation Coordinator
MAMSI
Post Office Box 935
Frederick, Maryland 21705

Re: Joel Serebof
M219446706*02

Dear Ms. Phelps:

Enclosed you will find copies of letters dated April 24, May 30 and June 7, 2001, sent to Karen Perkins in your office concerning MAMSI's position with regard to Marlene Sereboff. We maintain the same position with regard to any claims you may have with regard to Joel Sereboff.

If you need additional information, please do not hesitate to give me a call.

Yours very truly,
THE BOCCARDO LAW FIRM
LLP
By /s/
JOHN C. STEIN

JCS:lo
Encls.

Exhibit 20

[image omitted]

October 17, 2001

JOHN STEIN
ATTORNEY AT LAW
111 W. ST. JOHN STREET
SAN JOSE, CA 95115

RE: Marlene D. Sereboff
Member Number: M219446706*01
DOA: June 22, 2000

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member. We have not processed any additional claims since our last update. Our lien remains at $72,929.86.

Please advise this office when there is a change in the status of the case which could affect our subrogation lien.

Once the case settles, please make a check payable to MAMSI Life and Health Insurance Co. for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/
Karen Perkins
Litigation Analyst ext. 3937

Enclosure

cc: Marlene D. Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[next page]
[image omitted]

December 17, 2001

JOHN STEIN
ATTORNEY AT LAW
111 W. ST. JOHN STREET
SAN JOSE, CA 95115

RE: Marlene D. Sereboff
Member Number: M219446706*01
DOA: June 22, 2000

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member. We have not

processed any additional claims since our last update. Our lien remains at $72,929.86.

Please advise this office when there is a change in the status of the case which could affect our subrogation lien.

Once the case settles, please make a check payable to MAMSI Life and Health Insurance Co. for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/

Karen Perkins
Litigation Analyst ext. 3937

Enclosure

cc: Marlene D. Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 21

[image omitted]

February 22, 2002

JOHN STEIN
ATTORNEY AT LAW
111 W. ST. JOHN ST
SAN JOSE, CA 95115

RE: Joel Sereboff
Member Number: M219446706*02
DOA: June 22, 2000

Dear Sir/Madam:

We have updated our subrogation lien on the referenced case to include additional claims processed since the original claim summary mailed to you on October 18, 2000.

The current subrogation lien amount is $1,091.11.

Please advise this office when there is a change in the status of this case which would affect our subrogation lien. I can be reached at (877) 288-0266.

Sincerely,

/s/

Karen Perkins
Litigation Analyst ext. 3937

Enclosure

cc: Joel Sereboff

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

Exhibit 22

[image omitted]

April 25, 2002

John Stein
Attorney At Law
111 West St. John Street
San Jose, CA 95115

RE:	Member:	Marlene Sereboff
	Member Number:	M219446706*01
	Date of Incident:	6-22-00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $73,778.26.

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at 877-288-0266 Ext. 3937.

Sincerely,

/s/

Karen S. Perkins
Litigation Analyst

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[next page]

[image omitted]

JUNE 25, 2002

JOHN STEIN
111 W. ST. JOHN STREET
SAN JOSE, CA 95115

RE: Member Name: MARLENE D. SEREBOFF
Member Number: M219446706*01
Date of Loss: 6/22/00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $73,778.26.

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI Life and Health Insurance Company (MLH) for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/

Karen Perkins

Litigation Analyst ext. 3937

[next page]

[image omitted]

August 22, 2002

John Stein

Attorney At Law

111 West St. John's Street

San Jose, CA 95115

RE: Member: Marlene Sereboff
Member Number: M219446706*01
Date of Incident: 6-22-00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $73,778.26.

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at 877-288-0266 Ext. 3937.

Sincerely,

/s/

Karen S. Perkins
Litigation Analyst

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[image omitted]

MARCH 12, 2003

JOHN STEIN
111 W. ST. JOHN STREET
SAN JOSE, CA 95115

RE: Member Name: MARLENE D. SEREBOFF
Member Number: M219446706*01
Date of Loss: 6/22/00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $73,778.26.

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI Life and Health Insurance Company (MLH) for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/

Andrea Hrycenko
Sr. Subrogation Coordinator ext. 3929

Exhibit 23
[image omitted]

May 24, 2002

John Stein
Attorney At Law
111 West St. John Street
San Jose, CA 95115

RE:	Member:	Joel Sereboff
	Member Number:	M219446706*02
	Date of Incident:	6-22-00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $1,091.11,

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at 877-288-0266 Ext. 3937.

Sincerely,

/s/

Karen S. Perkins
Litigation Analyst

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[next page]
[image omitted]

August 22, 2002

John Stein
Attorney At Law
111 West St. John's Street
San Jose, CA 95115

RE:	Member:	Joel Sereboff
	Member Number:	M219446706*02
	Date of Incident:	6-22-00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $1,091.11,

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at 877-288-0266 Ext. 3937.

Sincerely,

/s/

Karen S. Perkins
Litigation Analyst

P.O. Box 935 • Frederick, Maryland 20705 • (301) 360-8095 • Fax: (301) 360-8970
Corporate address: 4 Taft Court • Rockville, Maryland 20850
www.mamsi.com

[next page]

[image omitted]

MARCH 12, 2003

JOHN STEIN
111 W. ST. JOHN STREET
SAN JOSE, CA 95115

RE: Member Name: JOEL SEREBOFF
Member Number: M219446706*02
Date of Loss: 6/22/00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $1,091.11,

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI Life and Health Insurance Company (MLH) for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/

Andrea Hrycenko
Sr. Subrogation Coordinator ext. 3929

Exhibit 24

[image omitted]

MARCH 12, 2003

JOEL SEREBOFF
2215 Millridge Rd.
OWINGS MILLS, MD 21117

RE: Member Name: JOEL SEREBOFF
Member Number: M219446706*02
Date of Loss: 6/22/00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $1,091.11,

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI Life and Health Insurance Company (MLH) for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/
Andrea Hrycenko
Sr. Subrogation Coordinator ext. 3929

Exhibit 25
[image omitted]

MARCH 12, 2003

MARLENE D. SEREBOFF
2215 Millridge Rd.
OWINGS MILLS, MD 21117

RE: Member Name: MARLENE D. SEREBOFF
Member Number: M219446706*01
Date of Loss: 6/22/00

Dear Sir/Madam:

Please be advised that we are reviewing our subrogation file on the above referenced member.

We have not processed any additional claims since our last update. Our lien remains at $73,778.26.

Please advise this office when there is a change in the status of the case, which could affect our subrogation lien.

Once the case reaches settlement, please make a check payable to MAMSI Life and Health Insurance Company (MLH) for our lien balance. Please include the member number on the check to ensure the account is credited properly.

If you have any questions, please contact me at (877) 288-0266.

Sincerely,

/s/

Andrea Hrycenko

Sr. Subrogation Coordinator ext. 3929

Exhibit 26

[image omitted]

March 20, 2003

Andrea Hrycenko
MAMSI
P.O. Box 935
Frederick, MD 21705

RE:Member Name:Marlene Sereboff/Joel Sereboff
Member Number:M219446706*01/ M219446706*02
Date of Loss: 6/22/00

Dear Ms. Hrycenko:

This will acknowledge your letter dated March 12, 2003 with reference to Marlene and Joel Sereboff.

It is my understanding that this coverage was provided through Mrs. Sereboff's employment, and as such it was provided in accordance with the terms of the Federal Employers Retirement Income and Security Act (ERISA).

As you may or may not know, the Ninth Circuit Court of Appeals has rendered four decisions in the last several years in which they have uniformly held that insurance carriers covered by ERISA are not permitted to recover subrogation liens, the difference between what the hospital or physician normally charges and the amount that the insurance carrier pays.

For your information, the cases that cover this issue are: Reynolds Metals Co. vs. Cole, (9th Cir. 2000) 202 F.3d 1246, Cement Masons Health and Welfare Trust Fund for Northern California, et al. vs. Raymond Stone, (9th Cir. 1999) 197 F.3d 1003, FMC Medical Plan vs. Owens (9th Cir. 1997) 122 F.3d 1258, and Pacificare vs. Martin (9th Cir. 1993) 34 F.3d 834.

On January 9, 2002, the United States Supreme Court handed down a decision entitled Great-West Life & Annuity Insurance Company v. Janette Knudson, (2002) 122 S. Ct. 708, in which it affirmed the Ninth Circuit Ruling that the medical insurance carrier for Mrs. Knudson was not permitted to recover the medical lien because it was in essence an action for money damages which is not permitted under ERISA Section 502(a)(3).

Finally, on August 15, 2002, the Ninth Circuit Court of Appeals was again asked to examine the

collectibility of medical liens in the case of Westaff (USA) Inc. v. Betty Arce, (2002) 298 F.3d 1164, and held that the Supreme Court holding cited above absolutely prohibits the recovery of any liens or subrogation claims that the providers may have if they in fact have accepted ERISA insurance company payments.

The Federal Law preempts any collection statutes, particularly those dealing with ERISA programs, and it is my opinion that MAMSI is not entitled to receive any reimbursement upon its claims in accordance with the decisions of the Ninth Circuit and the United States Supreme Court.

If you have any further questions after you have reviewed the above cases, I would happy to discuss this matter futher.

Very truly yours,
THE BOCCARDO LAW FIRM LLP

BY:
JOHN C. STEIN

JCS/tcg

cc: Joel and Marlene Sereboff

Exhibit 27

JOHN R. WILLIAMS (CA Bar No. 038391)
MEDIATOR
110 North Third Street
San Jose, California 95112
Telephone: (408) 288-3868
Facsimile: (408) 288-3860

(ENDORSED)
FILED
JAN 24 03
UNITED STATES
OFFICER / CLERK
SUPERIOR COURT
OF CA
COUNTY OF
SANTA CLARA
By_____DEPUTY
E.R. Hernandez Spitters

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

JOEL & MARLENE SEREBOFF, et al. Plaintiff, vs. CHARLES E. ROEDERER, et al., Defendants.	NO. CV791810 NOTICE OF SETTLEMENT THROUGH MEDIATION UNDER LOCAL RULE 1.11.11 AND CRC 225(a)

The parties having stipulated to Mediation in lieu of Judicial Arbitration, the above-captioned matter was mediated as scheduled on August 26, 2002, October 2, 2002 and January 20, 2003. Jack Stein represented the

plaintiffs, JOEL & MARLENE SEREBOFF, who were present throughout the Third Mediation. Donald J. Roberts represented defendants, LANCASTER COLONY CORPORATION and CHARLES E. ROEDERER. Defendant's claims representative, Ryan Greenup of Liberty Mutual Group was present throughout the mediations. Kenneth C. Ward represented defendants, QUAPAW CONSTRUCTION, AVIS RENT-A-CAR SYSTEMS, and HERTZ CORPORATION at the First Mediation and Second Mediation. Scott W. O'Neill represented defendant/cross-defendant/cross-complainant, DOLLAR RENT A CAR SYSTEMS, INC. at the First Mediation and Second Mediation. Thomas McGraff/Ms. Terry Rogan represent BLUNK DEMATTEI ASSOCIATES and were present at the First, Second and Third Mediations respectively. Martin Snyder represented defendants, ENTERPRISE, KRA ENTERPRISES, INC., dba PAYLESS RENT A CAR, SAN RAMON CARRIAGE dba THRIFTY, FOX RENT A CAR and CITY OF SANE JOSE. Defendants' claim representative, Sarah M. Rapolas, of St. Paul Property and Liability Insurance was present through the First and Second Mediations. Stan Linker represented K&G ARCHITECTS and was present at all sessions. Jim Pyle, Claims Representative for DPIC was present during the first two sessions of mediation.

PLEASE TAKE NOTICE that the above-captioned matter has settled in full through Mediation. A Request for Dismissal with prejudice will be signed and filed.

Dated: January 23, 2003

By: /s/

JOHN R. WILLIAMS

ATTORNEY/MEDIATOR

Seberboff v. Roederer
Santa Clara Superior Court No. CV 791810

(ENDORSED)
FILED
JAN 24 03

PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years and not a party to the within action. My business is North Third Street, San Jose, CA 95112.

On the date set forth below, I served the following documents:

Notice of Settlement Through Mediation Under Local Rule 1.11.11 and CRC 225(a)

On the interested parties to said action by the following means:

[X] (BY MAIL) By placing at true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the offices of Williams, Pinelli & Cullem, LLP, San Jose, CA addressed as shown below. I am readily familiar with this business's practice for collection and process of correspondence for mailing with the U.S. Postal Service the same day it was placed for collection and processing.

[ ] (By HAND-DELIVERY) By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] (BY FACSIMILE TRANSMISSION) By transmitting a true copy thereof by facsimile transmission from facsimile number (408) 288-3860

to the interested parties to said action at the facsimile number(s) shown below.

I declare under penalty of perjury under the laws of the United States of California that the foregoing is true and correct.

Executed on January 23, 2003 at San Jose, California.

/s/

MILLI ABRAHAM

NAMES(S) AND ADDRESS(ES) OR FAX NUMBER(S) OF EACH PARTY SERVED:

John C. Stein
The Boccardo Law Firm LLP
Post Office Box 15001
San Jose, CA 95115-0001

Donald J. Roberts
Winningham, Roberts, Fama & Kramer
One Front Street, Suite 500
San Francisco, CA 94111

Scott W. O'Neill
O'Neill & Marchiando
5 Hutton Centre Drive, Suie 1120
Santa Ana, CA 92707

Martin Snyder
Snyder, Corenlius & Hunter
399 Taylor Boulevard, Suite 106
Pleasant Hill, CA 94523

Terry Rogan
Hanson Bridgett
339 Market Street, 23rd Floor
San Francisco, CA 94105-2173

Stan Linker
Kennedy, Archer & Harray
24591 Silver Cloud Court, #200
Monterey, CA 93940

Kenneth C. Ward
Luanne Rutherford
Archer, McComas, Breslin, et al.
Post Office Box 8035
2033 North Main Street, Suite 800
Walnut Creek, CA 94596

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC.,	
Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP,	Case No.1:03-cv-02269-AMD
Defendants	

PLAINTIFF'S MOTION FOR CONTEMPT

Plaintiff, Mid Atlantic Medical Services, Inc. ("MAMSI"), moves the Court, pursuant to Fed. R. Civ. Proc. 70, to hold Defendants, Joel and Marlene Sereboff (the "Sereboffs"), in contempt of this Court's January 26, 2004, order and order the Sereboffs to pay over monies to MAMSI or its counsel as MAMSI's designee in compliance with this Court's January 26, 2004, order or show cause why they should not be held in contempt. This Court's order dated January 26, 2004, required the Sereboffs to pay over to MAMSI or its counsel as MAMSI's designee, the principal sum of $74,869.37, together with interest at the legal rate of six percent per annum dating from March 12, 2003, provided that such payment shall be reduced by the amount calculated

according to part 4 of this Court's order. The order required that the Sereboffs pay over these monies by February 9, 2004, and they have failed to do so. MAMSI contemporaneously submits a memorandum in support of its motion.

Respectfully submitted,

[Local Counsel] /s/ Michelle Stawinski
Michelle Stawinski
Bouland & Brush, LLC
201 N. Charles Street, Suite 2400
Baltimore, Maryland 21201-4108
Telephone: (410) 752-6000
Facsimile: (410) 625-3859

[Lead Counsel] /s/ Thomas H. Lawrence
Thomas H. Lawrence
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4430
Facsimile: (901) 844-4435

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MID ATLANTIC MEDICAL SERVICES, INC.,	
Plaintiff	
v.	
JOEL SEREBOFF, MARLENE SEREBOFF, JOHN STEIN AND THE BOCCARDO LAW FIRM, LLP,	Case No.1:03-cv-02269-AMD
Defendants	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR CONTEMPT

Plaintiff, Mid Atlantic Medical Services, Inc. ("MAMSI"), submits this memorandum in support of its motion for contempt order as to Joel Sereboff and Marlene Sereboff (the "Sereboffs").

On January 26, 2004, this Court granted MAMSI's motion for summary judgment in part and denied it in part.[1] Additionally, on January 26, 2004, this Court ordered the Sereboffs to pay over to MAMSI or its counsel as MAMSI's designee, the principal sum of $74,869.37,

[1] *See* January 26, 2004, Declaratory Judgment and Order attached hereto as Exhibit A.

together with interest at the legal rate of six percent per annum dating from March 12, 2003, provided that such payment shall be reduced by the amount calculated according to part 4 of this Court's order.[2]

The order required that the Sereboffs pay over these monies by February 9, 2004; however, they have failed to do so, and therefore, they are in violation of this Court's order.[3]

ARGUMENT AND AUTHORITIES

If a judgment directs a party to perform a specific act and the party fails to comply with the order, this Court may - even if the party has appealed – compel obedience to the judgment:

> We begin with the basic proposition that all orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal.

Maness v. Meyers, 419 U.S. 449, 458 (1975).

Although the Sereboffs filed a Notice of Appeal on February 24, 2004, the Sereboffs failed to file a motion to stay this Court's January 26, 2004.[4] Currently, the Sereboffs are in violation of this Court's order and were in violation of this Court's order as early as February 9, 2004, at least 14 days prior to filing their notice of appeal.

CONCLUSION

For the foregoing reasons, MAMSI respectfully requests the Court grant its motion and order the Sereboffs to turn over $53,293.37 to MAMSI within seven days of

---

[2] *Id.*.

[3] *Id.*; *see also* Affidavit of Thomas H. Lawrence attached hereto as Exhibit B.

[4] *See* Notice of Appeal filed by the Sereboffs on February 24, 2004.

the date of this order or else be fined $1,000.00 per day until they comply with this Court's January 26, 2004, order.

Respectfully submitted,

[Local Counsel] /s/ Michelle Stawinski
Michelle Stawinski
Bouland & Brush, LLC
201 N. Charles Street, Suite 2400
Baltimore, Maryland 21201-4108
Telephone: (410) 752-6000
Facsimile: (410) 625-3859

[Lead Counsel] /s/ Thomas H. Lawrence
Thomas H. Lawrence
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: (901) 844-4430
Facsimile: (901) 844-4435

CERTIFICATE OF SERVICE

I hereby certify that I have this the 17th day of March, 2004, served a copy of the foregoing on by mailing said copies by first class, U.S. mail, postage prepaid, addressed as follows:

John C. Stein
THE BOCCARDO LAW FIRM LLP
111 West St. John Street
Eleventh Floor

P.O. Box 15001
San Jose, California 95115-0001

/s/ Thomas H. Lawrence